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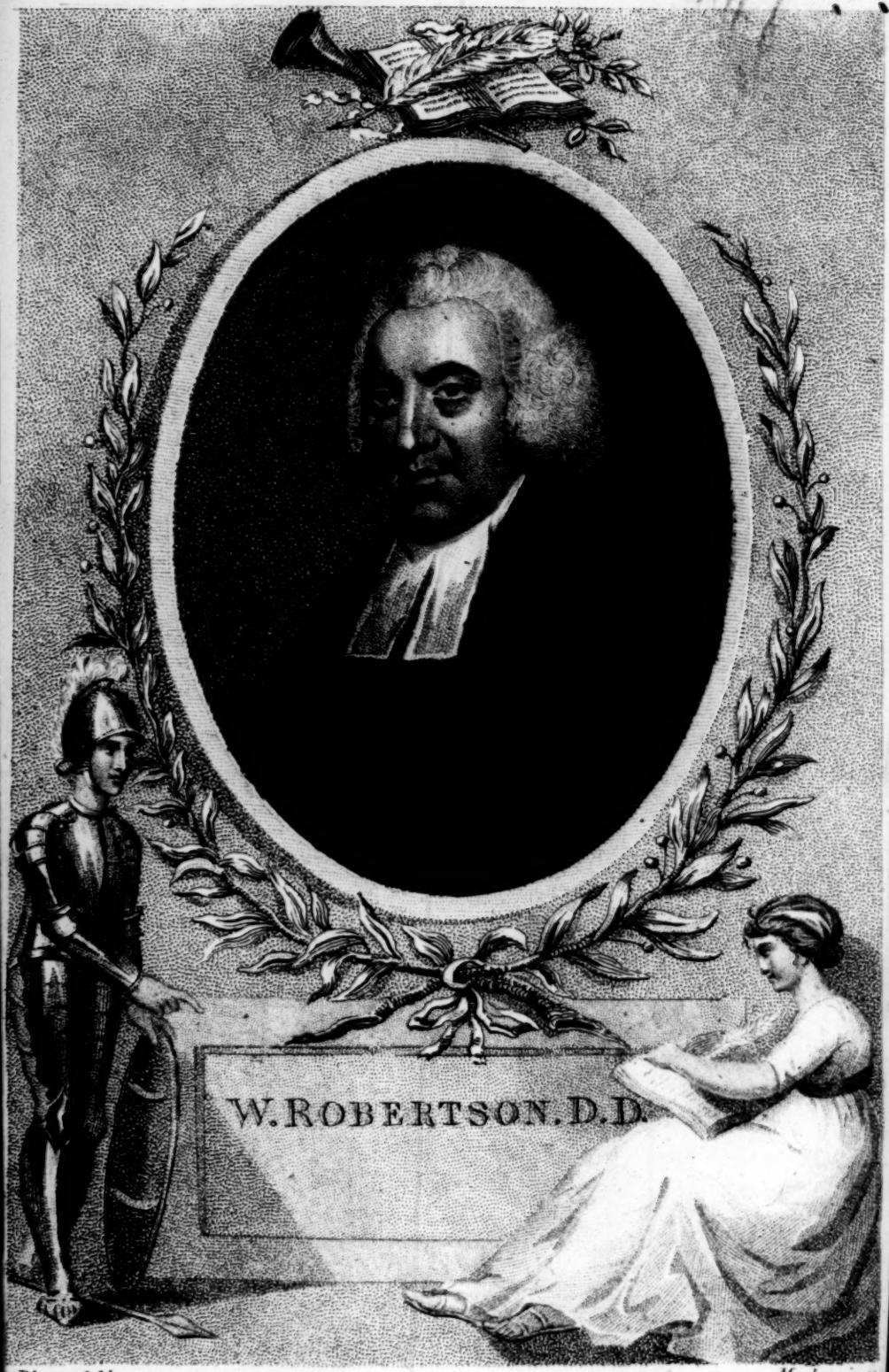


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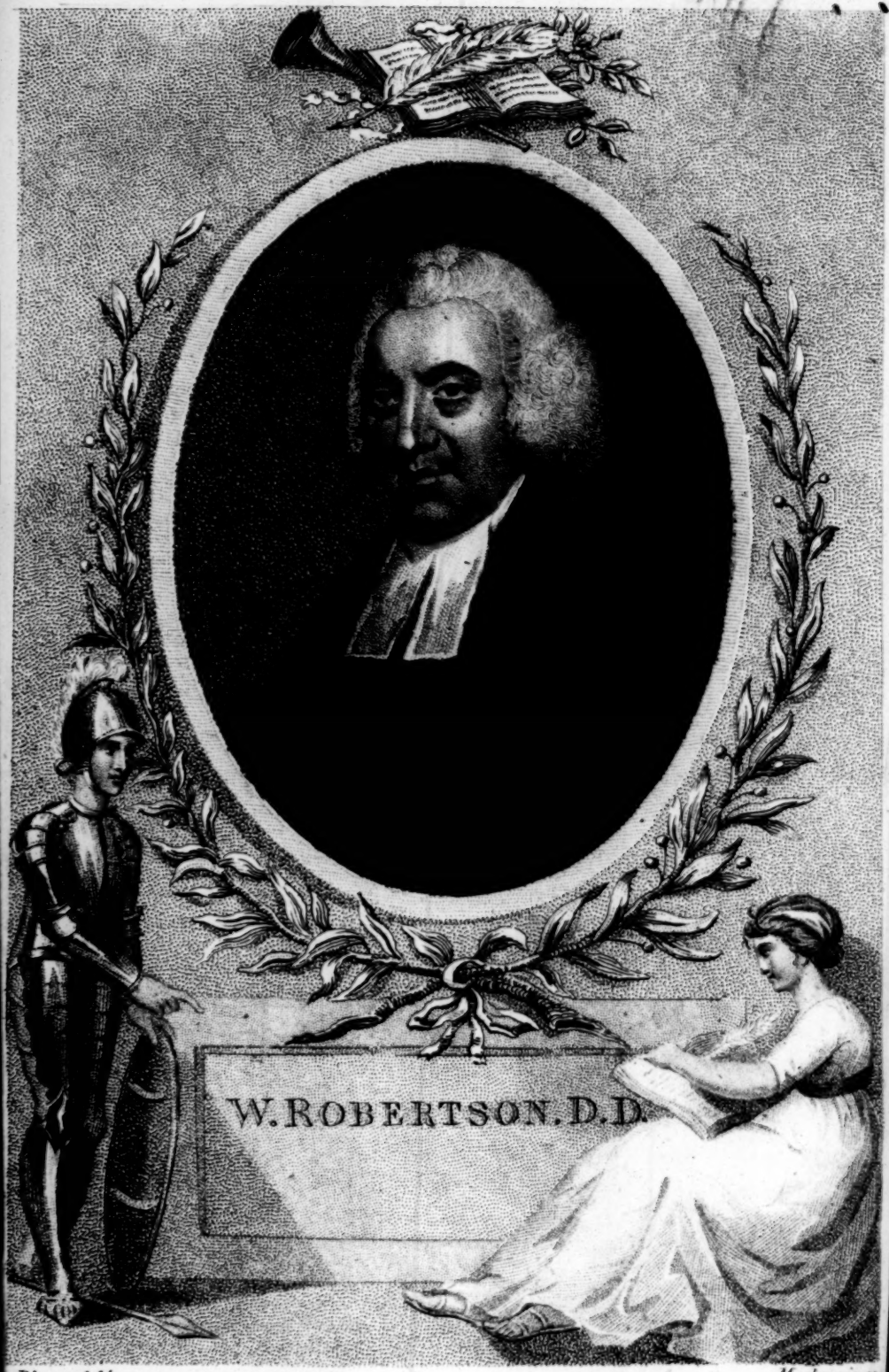


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THE

# HISTORY OF THE REIGN

OF THE

# EMPEROR CHARLES V.

WITH A VIEW OF THE

## Progress of Society in Europe,

FROM THE

SUBVERSION OF THE ROMAN EMPIRE,

TO THE

BEGINNING OF THE SIXTEENTH CENTURY.

BY

WILLIAM ROBERTSON, D.D.

LATE PRINCIPAL OF THE UNIVERSITY OF EDINBURGH, AND HISTORIOGRAPHER TO HIS MAJESTY FOR SCOTLAND.

TENTH EDITION.

IN FOUR VOLUMES.

VOL. I.

*Embellished with four elegant Engravings.*

GLASGOW,

Printed by and for Chapman and Lang.

1800.

BRITISH MUSEUM
30
72
JUL

TO THE

# KING.

SIR,

I PRESUME to lay before Your Majeſty the Hiſtory of a Period, which, if the abilities of the Writer were equal to the dignity of the Subject, would not be unworthy the attention of a Monarch, who is no leſs a Judge than a Patron of Literary Merit.

HISTORY claims it as her prerogative to offer inſtruction to KINGS, as well as to their people. What reflections the Reign of the Emperor CHARLES V. may ſuggeſt to Your Majeſty, it becomes not me to conjecture. But your Subjects cannot obſerve the various calamities, which that Monarch's ambition to be diſtinguiſhed as a Conqueror, brought upon his dominions, without recollecting the felicity of their own times, and looking up with gratitude to their Sovereign, who, during the fervour of youth, and amidſt the career of victory, poſſeſſed ſuch ſelf-command, and maturity of judgment, as to ſet bounds to his own triumphs, and prefer the bleſſings of peace to the ſplendour of military glory.

POSTERITY will not only celebrate the wiſdom of Your Majeſty's choice, but will enumerate the many virtues, which render Your reign conſpicuous for a ſacred regard to all the duties incumbent on the Sovereign of a Free People.

IT is our happineſs to feel the influence of theſe Virtues; and to live under the dominion of a Prince, who delights more in promoting the Public Welfare, than in receiving the juſt Praiſe of his Royal Beneficence. I am,

SIR,

YOUR MAJESTY'S

Moſt faithful Subject,

And moſt dutiful Servant,

WILLIAM ROBERTSON.

THE

# PREFACE.

No period in the hiſtory of one's own country can be conſidered as altogether unintereſting. Such tranſactions as tend to illuſtrate the progreſs of its conſtitution, laws, or manners, merit the utmoſt attention. Even remote and minute events are objects of a curioſity, which, being natural to the human mind, the gratification of it is attended with pleaſure.

But, with reſpect to the hiſtory of foreign States, we muſt ſet other bounds to our deſire of information. The univerſal progreſs of ſcience, during the two laſt centuries, the art of printing, and other obvious cauſes, have filled Europe with ſuch a multiplicity of hiſtories, and with ſuch vaſt collections of hiſtorical materials, that the term of human life is too ſhort for the ſtudy or even the peruſal of them. It is neceſſary, then, not only for thoſe who are called to conduct the affairs of nations, but for ſuch as inquire and reaſon concerning them, to remain ſatisfied with a general knowledge of diſtant events, and to confine their ſtudy of hiſtory in detail chiefly to that period, in which the ſeveral States of Europe having become intimately connected, the operations of one power are ſo felt by all, as to influence their councils, and to regulate their meaſures.

Some boundary, then, ought to be fixed in order to ſeparate theſe periods. An æra ſhould be pointed out, prior to which, each country, little connected with thoſe around it, may trace its own hiſtory apart; after which, tranſactions of every conſiderable nation in Europe become intereſting and inſtructive to all. With this intention I undertook to

write the hiſtory of the Emperor CHARLES V. It was during his adminiſtration that the powers of Europe were formed into one great political ſyſtem, in which each took a ſtation, wherein it has ſince remained with leſs variation, than could have been expected after the ſhocks occaſioned by ſo many internal revolutions, and ſo many foreign wars. The great events which happened then have not hitherto ſpent their force. The political principles and maxims, then eſtabliſhed ſtill continue to operate. The ideas concerning the balance of power, then introduced or rendered general, ſtill influence the councils of nations.

The age of CHARLES V. may therefore be conſidered as the period at which the political ſtate of Europe began to aſſume a new form. I have endeavoured to render my account of it, an introduction to the hiſtory of Europe ſubſequent to his reign. While his numerous Biographers deſcribe his perſonal qualities and actions; while the hiſtorians of different countries relate occurrences the conſequences of which were local or tranſient, it hath been my purpoſe to record only thoſe great tranſactions in his reign, the effects of which were univerſal, or continue to be permanent.

As my readers could derive little inſtruction from ſuch a hiſtory of the reign of CHARLES V. without ſome information concerning the ſtate of Europe previous to the ſixteenth century, my deſire of ſupplying this has produced a preliminary volume, in which I have attempted to point out and to explain the great cauſes and events, to whoſe operation all the improvements in the political ſtate of Europe, from the ſubverſion of the Roman Empire to the beginning of the ſixteenth century, muſt be aſcribed. I have exhibited a view of the progreſs of ſociety in Europe, not only with reſpect to interior government, laws, and manners, but with reſpect to the command of the national force requiſite in foreign operations; and I have deſcribed the political conſtitution of the principal ſtates in Europe at the time when Charles V. began his reign.

In this part of my work I have been led into ſeveral critical diſquiſitions, which belong more properly to the province of the lawyer or antiquary, than to that of the hiſtorian. Theſe I have placed at the end of the firſt volume, under the title of Proofs and Illuſtrations. Many of my readers will, probably, give little attention to ſuch reſearches. To ſome they may, perhaps, appear the moſt curious and intereſting part of the work. I have carefully pointed out the ſources from which I have derived information, and have cited the writers on whoſe authority I rely with a minute exactneſs, which might appear to border upon oſtentation, if it were poſſible to be vain of having read books, many of which nothing but the duty of examining with accuracy whatever I laid before the Public, would have induced me to open. As my inquiries conducted me often into paths which were obſcure or little frequented, ſuch conſtant references to the authors who have been my guides, were not only neceſſary for authenticating the facts which are the foundations of my reaſonings, but may be uſeful in pointing out the way to ſuch as ſhall hereafter hold the ſame courſe, and in enabling them to carry on their reſearches with greater facility and ſucceſs.

Every intelligent reader will obſerve one omiſſion in my work, the reaſon of which it is neceſſary to explain. I have given no account of the conqueſts of Mexico and Peru, or of the eſtabliſhment of the Spaniſh colonies in the continent and iſlands of America. The hiſtory of theſe events I originally intended to have related at conſiderable length. But upon a nearer and more attentive conſideration of this part of my plan, I found that the diſcovery of the new world; the ſtate of ſociety among its ancient inhabitants; their character, manners, and arts; the genius of the European ſettlements in its various provinces, together with the influence of theſe upon the ſyſtems of policy or commerce in Europe, were ſubjects ſo ſplendid and important, that a ſuperficial view of them could afford little ſatisfaction; and,

on the other hand, to treat of them as extenſively as they merited, muſt produce an epiſode, diſproportionate to the principal work. I have therefore reſerved theſe for a ſeparate hiſtory; which, if the performance now offered to the Public ſhall receive its approbation, I purpoſe to undertake.

Though, by omitting ſuch conſiderable but detached articles in the reign of Charles V. I have circumſcribed my narration within more narrow limits, I am yet perſuaded, from this view of the intention and nature of the work which I thought it neceſſary to lay before my readers, that the plan muſt ſtill appear to them too extenſive, and the undertaking too arduous. I have often felt them to be ſo. But my conviction of the utility of ſuch a hiſtory prompted me to perſevere. With what ſucceſs I have executed it, the Public muſt now judge. I wait, not without ſolicitude, for its deciſion; to which I ſhall ſubmit with a reſpectful ſilence.

A

# VIEW

OF THE

## *PROGRESS OF SOCIETY IN EUROPE,*

FROM THE

SUBVERSION OF THE ROMAN EMPIRE,

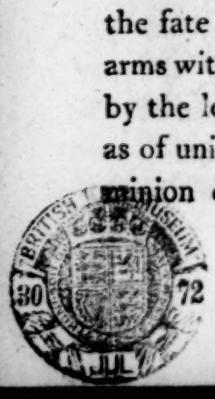
TO THE

BEGINNING OF THE SIXTEENTH CENTURY.

## SECT. I.

*View of the Progreſs of Society in Europe, with reſpect to interior Government, Laws, and Manners.*

Two great revolutions have happened in the political ſtate, and in the manners of the European nations. The firſt was occaſioned by the progreſs of the Roman power; the ſecond by the ſubverſion of it. When the ſpirit of conqueſt led the armies of Rome beyond the Alps, they found all the countries which they invaded, inhabited by people whom they denominated barbarians, but who were nevertheleſs brave and independent. Theſe defended their ancient poſſeſſions with obſtinate valour. It was by the ſuperiority of their diſcipline, rather than that of their courage, that the Romans gained any advantage over them. A ſingle battle did not, as among the effeminate inhabitants of Aſia, decide the fate of a ſtate. The vanquiſhed people reſumed their arms with freſh ſpirit, and their undiſciplined valour, animated by the love of liberty, ſupplied the want of conduct as well as of union. During thoſe long and fierce ſtruggles for dominion or independence, the countries of Europe were ſuc-



ceſſively laid waſte, a great part of their inhabitants periſhed in the field, many were carried into ſlavery, and a feeble remnant, incapable of further reſiſtance, ſubmitted to the Roman power.

The Romans having thus deſolated Europe, ſet themſelves to civilize it. The form of government which they eſtabliſhed in the conquered provinces, though ſevere, was regular, and preſerved public tranquillity. As a conſolation for the loſs of liberty, they communicated their arts, ſciences, language, and manners, to their new ſubjects. Europe began to breathe, and to recover ſtrength after the calamities which it had undergone; agriculture was encouraged; population increaſed; the ruined cities were rebuilt; new towns were founded; an appearance of proſperity ſucceeded, and repaired, in ſome degree, the havock of war.

This ſtate, however, was far from being happy or favourable to the improvement of the human mind. The vanquiſhed nations were diſarmed by their conquerors, and overawed by ſoldiers kept in pay to reſtrain them. They were given up as a prey to rapacious governors, who plundered them with impunity; and were drained of their wealth by exorbitant taxes, levied with ſo little attention to the ſituation of the provinces, that the impoſitions were often increaſed in proportion to their inability to ſupport them. They were deprived of their moſt enterprizing citizens, who reſorted to a diſtant capital in queſt of preferment, or of riches; and were accuſtomed in all their actions to look up to a ſuperior, and tamely to receive his commands. Under ſo many depreſſing circumſtances, it was hardly poſſible that they could retain vigour or generoſity of mind. The martial and independent ſpirit, which had diſtinguiſhed their anceſtors, became, in a great meaſure, extinct among all the people ſubjected to the Roman yoke; they loſt not only the habit but even the capacity of deciding for themſelves, or of acting from the impulſe of their own minds; and the domi-

nions of the Romans, like that of all great empires, degraded and debaſed the human ſpecies [A].

A ſociety in ſuch a ſtate could not ſubſiſt long. There were defects in the Roman government, even in its moſt perfect form, which threatened its diſſolution. Time ripened theſe original ſeeds of corruption, and gave birth to many new diſorders. A conſtitution, unſound, and worn out, muſt have fallen into pieces of itſelf, without any external ſhock. The violent irruption of the Goths, Vandals, Huns, and other barbarians, haſtened this event, and precipitated the downfal of the empire. New nations ſeemed to ariſe and to ruſh from unknown regions, in order to take vengeance on the Romans for the calamities which they had inflicted on mankind. Theſe fierce tribes either inhabited the various provinces in Germany which had never been ſubdued by the Romans, or were ſcattered over thoſe vaſt countries in the north of Europe, and north-weſt of Aſia, which are now occupied by the Danes, the Swedes, the Poles, the ſubjects of the Ruſſian empire, and the Tartars. Their condition and tranſactions, previous to their invaſion of the empire, are but little known. Almoſt all our information with reſpect to theſe is derived from the Romans; and as they did not penetrate far into countries, which were at that time uncultivated and uninviting, the accounts of their original ſtate given by the Roman hiſtorians are extremely imperfect. The rude inhabitants themſelves, deſtitute of ſcience as well as of records, and without leiſure or curioſity to inquire into remote events, retained, perhaps, ſome indiſtinct memory of recent occurrences, but beyond theſe, all was buried in oblivion, or involved in darkneſs and in fable [B].

The prodigious ſwarms which poured in upon the empire from the beginning of the fourth century to the final extinction of the Roman power, have given riſe to an opinion that the countries whence they iſſued were crowded with

[A] Note I. [B] Note II.

inhabitants; and various theories have been formed to account for ſuch an extraordinary degree of population as hath produced theſe countries the appellation of The Storehouſe of Nations. But if we conſider, that the countries poſſeſſed by the people who invaded the empire were of vaſt extent; that a great part of theſe was covered with woods and marſhes; that ſome of the moſt conſiderable of the barbarous nations ſubſiſted entirely by hunting or paſturage, in both which ſtates of ſociety large tracts of land are required for maintaining a few inhabitants; and that all of them were ſtrangers to the arts and induſtry, without which population cannot increaſe to any great degree, we muſt conclude, that theſe countries could not be ſo populous in ancient times as they are in the preſent, when they ſtill continue to be leſs peopled than any other part of Europe or of Aſia.

But the ſame circumſtances that prevented the barbarous nations from becoming populous, contributed to inſpire, or to ſtrengthen, the martial ſpirit by which they were diſtinguiſhed. Inured by the rigour of their climate, or the poverty of their ſoil, to hardſhips which rendered their bodies firm and their minds vigorous; accuſtomed to a courſe of life which was a continual preparation for action; and diſdaining every occupation but that of war or of hunting; they undertook, and proſecuted their military enterprizes with an ardour and impetuoſity of which men ſoftened by the refinements of more poliſhed times can ſcarcely form any idea [C].

Their firſt inroads into the empire proceeded rather from the love of plunder than from the deſire of new ſettlements. Rouſed to arms by ſome enterpriſing or popular leader, they ſallied out of their foreſts; broke in upon the frontier provinces with irreſiſtable violence; put all who oppoſed them to the ſword; carried off the moſt valuable effects of the inhabitants; dragged along multitudes of captives in chains; waſted all before them with fire or ſword; and returned in

[C] Note III.

triumph to their wilds and faſtneſſes. Their ſucceſs, together with the accounts which they gave of the unknown conveniences and luxuries that abounded in countries better cultivated, or bleſſed with a milder climate than their own, excited new adventurers, and expoſed the frontier to new devaſtations.

When nothing was left to plunder in the adjacent provinces, ravaged by frequent excurſions, they marched farther from home, and finding it difficult, or dangerous to return, they began to ſettle in the countries which they had ſubdued. The ſudden and ſhort excurſions in queſt of booty, which had alarmed and diſquieted the empire, ceaſed; a more dreadful calamity impended. Great bodies of armed men, with their wives and children, and ſlaves and flocks, iſſued forth, like regular colonies, in queſt of new ſettlements. People who had no cities, and ſeldom any fixed habitation, were ſo little attached to their native ſoil, that they migrated without reluctance from one place to another. New adventurers followed them. The lands which they deſerted were occupied by more remote tribes of barbarians. Theſe, in their turn, puſhed forward into more fertile countries, and, like a torrent continually increaſing, rolled on, and ſwept every thing before them. In leſs than two centuries from their firſt eruption, barbarians of various names and lineage plundered and took poſſeſſion of Thrace, Pannonia, Gaul, Spain, Africa, and at laſt of Italy, and Rome itſelf. The vaſt fabric of the Roman power, which it had been the work of ages to perfect, was in that ſhort period overturned from the foundation,

Many concurring cauſes prepared the way for this great revolution, and enſured ſucceſs to the nations which invaded the empire. The Roman commonwealth had conquered the world by the wiſdom of its civil maxims, and the rigour of its military diſcipline. But, under the emperors, the former were forgotten or deſpiſed, and the latter were gradually relaxed. The armies of the empire in the fourth and fifth

centuries bore ſcarcely any reſemblance to thoſe invincible legions which had been victorious wherever they marched. Inſtead of freemen, who voluntarily took arms from the love of glory, or of their country, provincials and barbarians were bribed or forced into ſervice. Theſe were too feeble, or too proud to ſubmit to the fatigue of military duty. They even complained of the weight of their defenſive armour as intolerable, and laid it aſide. Infantry, from which the armies of ancient Rome derived their vigour and ſtability, fell into contempt; the effeminate and undiſciplined ſoldiers of later times could hardly be brought to venture into the field but on horſeback. Theſe wretched troops, however, were the only guardians of the empire. The jealouſy of deſpotiſm had deprived the people of the uſe of arms; and ſubjects, oppreſſed and rendered incapable of defending themſelves, had neither ſpirit nor inclination to reſiſt their invaders, from whom they had little to fear, becauſe their condition could hardly be rendered more unhappy. At the ſame time that the martial ſpirit became extinct, the revenues of the empire gradually diminiſhed. The taſte for the luxuries of the Eaſt increaſed to ſuch a pitch in the Imperial court, that great ſums were carried into India, from which, in the channel of commerce, money never returns. By the large ſubſidies paid to the barbarous nations, a ſtill greater quantity of ſpecie was withdrawn from circulation. The frontier provinces, waſted by frequent incurſions, became unable to pay the cuſtomary tribute; and the wealth of the world, which had long centered in the capital of the empire ceaſed to flow thither in the ſame abundance, or was diverted into other channels. The limits of the empire continued to be as extenſive as ever, while the ſpirit requiſite for its defence declined, and its reſources were exhauſted. A vaſt body, languid and almoſt unanimated, became incapable of any effort to ſave itſelf, and was eaſily overpowered. The emperors, who had the abſolute direction of this diſordered ſyſtem, ſunk in the ſoftneſs of Eaſtern luxury, ſhut up within the walls of a palace, ignorant of

war, unacquainted with affairs, and governed entirely by women and eunuchs, or by miniſters equally effeminate, trembled at the approach of danger, and, under circumſtances which called for the utmoſt vigour in council as well as in action, diſcovered all the impotent irreſolution of fear and of folly.

In every reſpect the condition of the barbarous nations was the reverſe of that of the Romans. Among the former, the martial ſpirit was in full vigour; their leaders were hardy and enterpriſing; the arts which had enervated the Romans were unknown; and ſuch was the nature of their military inſtitutions, that they brought forces into the field without any trouble, and ſupported them at little expence. The mercenary and effeminate troops ſtationed on the frontier, aſtoniſhed at their fierceneſs, either fled at their approach, or were routed on the firſt onſet. The feeble expedient to which the emperors had recourſe, of taking large bodies of the barbarians into pay, and of employing them to repel new invaders, inſtead of retarding, haſtened the deſtruction of the empire. Theſe mercenaries ſoon turned their arms againſt their maſters, and with greater advantage than ever, for, by ſerving in the Roman armies, they had acquired all the diſcipline, or ſkill in war, which the Romans ſtill retained; and, upon adding theſe to their native ferocity, they became altogether irreſiſtable.

But though from theſe, and many other cauſes, the progreſs and conqueſts of the nations which over-ran the empire became ſo extremely rapid, they were accompanied with horrible devaſtations, and an incredible deſtruction of the human ſpecies. Civilized nations, which take arms upon cool reflection, from motives of policy or prudence, with a view to guard againſt ſome diſtant danger, or to prevent ſome remote contingency, carry on their hoſtilities with ſo little rancour or animoſity, that war among them is diſarmed of half its terrors. Barbarians are ſtrangers to ſuch refinements. They ruſh into war with impetuoſity, and proſecute

it with violence. Their ſole object is to make their enemies feel the weight of their vengeance; nor does their rage ſubſide until it be ſatiated with inflicting on them every poſſible calamity. It is with ſuch a ſpirit that the ſavage tribes in America carry on their petty wars. It was with the ſame ſpirit that the more powerful and no leſs fierce barbarians in the north of Europe, and of Aſia, fell upon the Roman empire.

Wherever they marched, their rout was marked with blood. They ravaged or deſtroyed all around them. They made no diſtinction between what was ſacred and what was profane. They reſpected no age, or ſex, or rank. What eſcaped the fury of the firſt inundation, periſhed in thoſe which followed it. The moſt fertile and populous provinces were converted into deſerts, in which were ſcattered the ruins of villages and cities, that afforded ſhelter to a few miſerable inhabitants whom chance had preſerved, or the ſword of the enemy, wearied with deſtroying, had ſpared. The conquerors who firſt ſettled in the countries which they had waſted, were expelled or exterminated by new invaders, who, coming from regions farther removed from the civilized parts of the world, were ſtill more fierce and rapacious. This brought freſh calamities upon mankind, which did not ceaſe until the north, by pouring forth ſucceſſive ſwarms, was drained of people, and could no longer furniſh inſtruments of deſtruction. Famine and peſtilence, which always march in the train of war, when it ravages with ſuch inconſiderate cruelty, raged in every part of Europe, and completed its ſufferings. If a man were called to fix upon the period in the hiſtory of the world, during which the condition of the human race was moſt calamitous and afflicted, he would, without heſitation, name that which elapſed from the death of Theodoſius the Great, to the eſtabliſhment of the Lombards in Italy†. The contemporary authors, who beheld that

† Theodoſius died A. D. 395, the reign of Alboinus in Lombardy began A. D. 571; ſo that this period was 176 years.

ſcene of deſolation, labour and are at a loſs for expreſſions to deſcribe the horror of it. *The Scourge of God, the Deſtroyer of Nations*, are the dreadful epithets by which they diſtinguiſh the moſt noted of the barbarous leaders; and they compare the ruin which they had brought on the world, to the havock occaſioned by earthquakes, conflagrations, or deluges, the moſt formidable and fatal calamities which the imagination of man can conceive.

But no expreſſions can convey ſo perfect an idea of the deſtructive progreſs of the barbarians as that which muſt ſtrike an attentive obſerver when he contemplates the total change which he will diſcover in the ſtate of Europe, after it began to recover ſome degree of tranquillity, towards the cloſe of the ſixth century. The Saxons were by that time maſters of the ſouthern and more fertile provinces of Britain; the Franks of Gaul; the Huns of Pannonia; the Goths of Spain; the Goths and Lombards of Italy and the adjacent provinces. Very faint veſtiges of the Roman policy, juriſprudence, arts, or literature remained. New forms of government, new laws, new manners, new dreſſes, new languages, and new names of men and countries, were every where introduced. To make a great or ſudden alteration with reſpect to any of theſe, unleſs where the ancient inhabitants of a country have been almoſt totally exterminated, has proved an undertaking beyond the power of the greateſt conquerors [D]. The great change which the ſettlement of the barbarous nations occaſioned in the ſtate of Europe, may therefore be conſidered as a more deciſive proof than even the teſtimony of contemporary hiſtorians, of the deſtructive violence with which theſe invaders carried on their conqueſts, and of the havock which they had made from one extremity of this quarter of the globe to the other [E].

In the obſcurity of the chaos occaſioned by this general wreck of nations, we muſt ſearch for the ſeeds of order, and endeavour to diſcover the firſt rudiments of the policy and

[D] Note IV. [E] Note V.

laws now eſtabliſhed in Europe. To this ſource the hiſtorians of its different kingdoms have attempted, though with leſs attention and induſtry than the importance of the enquiry merits, to trace back the inſtitutions and cuſtoms peculiar to their countrymen. It is not my province to give a minute detail of the progreſs of government and manners in each particular nation, whoſe tranſactions are the object of the following hiſtory. But, in order to exhibit a juſt view of the ſtate of Europe at the opening of the ſixteenth century, it is neceſſary to look back, and to contemplate the condition of the northern nations upon their firſt ſettlement in thoſe countries which they occupied. It is neceſſary to mark the great ſteps by which they advanced from barbariſm to refinement, and to point out thoſe general principles and events which, by their uniform as well as extenſive operation, conducted all of them to that degree of improvement in policy and in manners which they had attained at the period when Charles V. began his reign.

When nations ſubject to deſpotic government make conqueſts, theſe ſerve only to extend the dominion and the power of their maſter. But armies compoſed of freemen conquer for themſelves, not for their leaders. The people who overturned the Roman empire, and ſettled in its various provinces, were of the latter claſs. Not only the different nations that iſſued from the north of Europe, which has always been conſidered as the ſtate of liberty, but the Huns and Alans who inhabited part of thoſe countries, which have been marked out as the peculiar region of ſervitude*, enjoyed freedom and independence in ſuch a high degree as ſeems to be ſcarcely compatible with a ſtate of ſocial union, or with the ſubordination neceſſary to maintain it. They followed the chieftain who led them forth in queſt of new ſettlements, not by conſtraint but from choice; not as ſoldiers whom he could order to march, but as volunteers who offer-

* De l'Eſprit des Loix, liv. 17. ch. 3.

ed to accompany him [F]. They conſidered their conqueſts as a common property, in which all had a title to ſhare, as all had contributed to acquire them [G]. In what manner or by what principles, they divided among them the lands which they ſeized we cannot now determine with any certainty. There is no nation in Europe whoſe records reach back to this remote period; and there is little information to be got from the uninſtructive and meagre chronicles compiled by writers ignorant of the true end, and unacquainted with the proper objects of hiſtory.

This new diviſion of property, however, together with the maxims and manners to which it gave riſe, gradually introduced a ſpecies of government formerly unknown. This ſingular inſtitution is now diſtinguiſhed by the name of the *Feudal Syſtem:* and though the barbarous nations which framed it, ſettled in their new territories at different times, came from different countries, ſpoke various languages, and were under the command of ſeparate leaders, the feudal policy and laws were eſtabliſhed, with little variation, in every kingdom of Europe. This amazing uniformity hath induced ſome authors* to believe that all theſe nations, notwithſtanding ſo many apparent circumſtances of diſtinction, were originally the ſame people. But it may be aſcribed, with greater probability, to the ſimilar ſtate of ſociety and of manners to which they were accuſtomed in their native countries, and to the ſimilar ſituation in which they found themſelves on taking poſſeſſion of their new domains.

As the conquerors of Europe had their acquiſitions to maintain not only againſt ſuch of the ancient inhabitants as they had ſpared, but againſt the more formidable inroads of new invaders, ſelf-defence was their chief care, and ſeems to have been the chief object of their firſt inſtitutions and policy. Inſtead of thoſe looſe aſſociations, which, though they

[F] Note VI. [G] Note VII.

* Procop. de bello Vandal. ap. Script. Byz. edit. Ven. vol. i. p. 345.

ſcarcely diminiſhed their perſonal independence, had been ſufficient for their ſecurity while they remained in their original countries, they ſaw the neceſſity of uniting in more cloſe confederacy, and of relinquiſhing ſome of their private rights in order to attain public ſafety. Every freeman, upon receiving a portion of the lands which were divided, bound himſelf to appear in arms againſt the enemies of the community. This military ſervice was the condition upon which he received and held his lands; and as they were exempted from every other burden, that tenure, among a warlike people was deemed both eaſy and honourable. The king or general who led them to conqueſt, continuing ſtill to be the head of the colony, had, of courſe, the largeſt portion allotted to him. Having thus acquired the means of rewarding paſt ſervices, as well as of gaining new adherents, he parcelled out his lands with this view, binding thoſe on whom they were beſtowed to reſort to his ſtandard with a number of men in proportion to the extent of the territory which they received, and to bear arms in his defence. His chief officers imitated the example of the ſovereign, and, in diſtributing portions of their lands among their dependents, annexed the ſame condition to the grant. Thus a feudal kingdom reſembled a military eſtabliſhment, rather than a civil inſtitution. The victorious army, cantoned out in the country which it had ſeized, continued ranged under its proper officers, and ſubordinate to military command. The names of a ſoldier and of a freeman were ſynonymous†. Every proprietor of land, girt with a ſword, was ready to march at the ſummons of his ſuperior, and to take the field againſt the common enemy.

But though the feudal policy ſeems to be ſo admirably calculated for defence againſt the aſſaults of any foreign power, its proviſions for the interior order and tranquillity of ſociety were extremely defective. The principles of diſorder and corruption are diſcernible in that conſtitution under its

† Du Cange Gloſſar. voc. *Miles.*

beſt and moſt perfect form. They ſoon unfolded themſelves, and, ſpreading with rapidity through every part of the ſyſtem, produced the moſt fatal effects. The bond of political union was extremely feeble; the ſources of anarchy were innumerable. The monarchical and ariſtocratical parts of the conſtitution, having no intermediate power to balance them, were perpetually at variance, and juſtling with each other. The powerful vaſſals of the crown ſoon extorted a confirmation for life of thoſe grants of land, which being at firſt purely gratuitous, had been beſtowed only during pleaſure. Not ſatisfied with this, they prevailed to have them converted into hereditary poſſeſſions. One ſtep more completed their uſurpations, and rendered them unalienable [H]. With an ambition no leſs enterpriſing, and more prepoſterous, they appropriated to themſelves titles of honour, as well as offices of power or truſt. Theſe perſonal marks of diſtinction, which the public admiration beſtows on illuſtrious merit, or which the public confidence confers on extraordinary abilities, were annexed to certain families, and tranſmitted like fiefs, from father to ſon, by hereditary right. The crown vaſſals having thus ſecured the poſſeſſion of their lands and dignities, the nature of the feudal inſtitutions, which though founded on ſubordination verged to independence, led them to new, and ſtill more dangerous encroachments on the prerogatives of the ſovereign. They obtained the power of ſupreme juriſdiction, both civil and criminal, within their own territories; the right of coining money; together with the privilege of carrying on war againſt their private enemies, in their own name, and by their own authority. The ideas of political ſubjection were almoſt entirely loſt, and frequently ſcarce any appearance of feudal ſubordination remained. Nobles who had acquired ſuch enormous power, ſcorned to conſider themſelves as ſubjects. They aſpired openly at being independent: the bonds which connected the principal members of the conſtitution with the crown,

[H] Note VIII.

were diſſolved. A kingdom, conſiderable in name and in extent, was broken into as many ſeparate principalities as it contained powerful barons. A thouſand cauſes of jealouſy and diſcord ſubſiſted among them, and gave riſe to as many wars. Every country in Europe, waſted or kept in continual alarm during theſe endleſs conteſts, was filled with caſtles and places of ſtrength erected for the ſecurity of the inhabitants; not againſt foreign force, but againſt internal hoſtilities. An univerſal anarchy, deſtructive, in a great meaſure, of all the advantages which men expect to derive from ſociety, prevailed. The people, the moſt numerous as well as the moſt uſeful part of the community, were either reduced to a ſtate of actual ſervitude, or treated with the ſame inſolence and rigour as if they had been degraded into that wretched condition [I]. The king ſtripped of almoſt every prerogative, and without authority to enact or to execute ſalutary laws, could neither protect the innocent, nor puniſh the guilty. The nobles, ſuperior to all reſtraint, haraſſed each other with perpetual wars, oppreſſed their fellow ſubjects, and humbled or inſulted their ſovereign. To crown all, time gradually fixed, and rendered venerable this pernicious ſyſtem, which violence had eſtabliſhed.

Such was the ſtate of Europe with reſpect to the interior adminiſtration of government from the ſeventh to the eleventh century. All the external operations of its various ſtates, during this period, were, of courſe, extremely feeble. A kingdom diſmembered, and torn with diſſenſion, without any common intereſt to rouſe, or any common head to conduct its force, was incapable of acting with vigour. Almoſt all the wars in Europe, during the ages which I have mentioned, were trifling, indeciſive, and productive of no conſiderable event. They reſembled the ſhort incurſions of pirates or banditti, rather than the ſteady operations of a regular army. Every baron, at the head of his vaſſals, carried on ſome petty enterprize, to which he was prompted by his

[I] Note IX.

own ambition or revenge. The ſtate itſelf, deſtitute of union, either remained altogether inactive, or if it attempted to make any effort, that ſerved only to diſcover its impotence. The ſuperior genius of Charlemagne, it is true, united all theſe disjointed and diſcordant members, and forming them again into one body, reſtored to government that degree of activity which diſtinguiſhes his reign, and renders the tranſactions of its objects not only of attention but of admiration to more enlightened times. But this ſtate of union and vigour, not being natural to the feudal government, was of ſhort duration. Immediately upon his death, the ſpirit which animated and ſuſtained the vaſt ſyſtem which he had eſtabliſhed, being withdrawn, it broke into pieces. All the calamities which flow from anarchy and diſcord, returning with additional force, afflicted the different kingdoms into which his empire was ſplit. From that time to the eleventh century, a ſucceſſion of unintereſting events; a ſeries of wars, the motives as well as the conſequences of which were unimportant, fill and deform the annals of all the nations in Europe.

To theſe pernicious effects of the feudal anarchy may be added its fatal influence on the character and improvement of the human mind. If men do not enjoy the protection of regular government, together with the expectation of perſonal ſecurity, which naturally flows from it, they never attempt to make progreſs in ſcience, nor aim at attaining refinement in taſte or in manners. That period of turbulence, oppreſſion, and rapine, which I have deſcribed, was ill ſuited to favour improvement in any of theſe. In leſs than a century after the barbarous nations ſettled in their new conqueſts, almoſt all the effects of the knowledge and civility, which the Romans had ſpread through Europe, diſappeared. Not only the arts of elegance, which miniſter to luxury, and are ſupported by it, but many of the uſeful arts, without which life can ſcarcely be conſidered as comfortable, were neglected or loſt. Literature, ſcience, taſte, were words little

in uſe during the ages which we are contemplating; or, if they occur at any time, eminence in them is aſcribed to perſons and productions ſo contemptible, that it appears their true import was little underſtood. Perſons of the higheſt rank, and in the moſt eminent ſtations, could not read or write. Many of the clergy did not underſtand the breviary which they were obliged daily to recite; ſome of them could ſcarcely read it [K]. The memory of paſt tranſactions was, in a great degree, loſt, or preſerved in annals filled with trifling events, or legendary tales. Even the codes of laws, publiſhed by the ſeveral nations which eſtabliſhed themſelves in the different countries of Europe, fell into diſuſe, while, in their place, cuſtoms, vague and capricious, were ſubſtituted. The human mind, neglected, uncultivated, and depreſſed, continued in the moſt profound ignorance. Europe, during four centuries, produced few authors who merit to be read, either on account of the elegance of their compoſition, or the juſtneſs and novelty of their ſentiments. There are few inventions, uſeful or ornamental to ſociety, of which that long period can boaſt.

Even the Chriſtian religion, though its precepts are delivered, and its inſtitutions are fixed in ſcripture, with a preciſion which ſhould have exempted them from being miſinterpreted or corrupted, degenerated, during thoſe ages of darkneſs, into an illiberal ſuperſtition. The barbarous nations, when converted to Chriſtianity, changed the object, not the ſpirit, of their religious worſhip. They endeavoured to conciliate the favour of the true God by means not unlike to thoſe which they had employed in order to appeaſe their falſe deities. Inſtead of aſpiring to ſanctity and virtue, which alone can render men acceptable to the great Author of order and of excellence, they imagined that they ſatisfied every obligation of duty by a ſcrupulous obſervance of external ceremonies [L]. Religion, according to their conception of it, comprehended nothing elſe; and the rites by

[K] Note X. [L] Note XI.

which they perſuaded themſelves that they ſhould gain the favour of heaven, were of ſuch a nature as might have been expected from the rude ideas of the ages which deviſed and introduced them. They were either ſo unmeaning as to be altogether unworthy of the Being to whoſe honour they were conſecrated; or ſo abſurd as to be a diſgrace to reaſon and humanity [M]. Charlemagne in France, and Alfred the Great in England, endeavoured to diſpel this darkneſs, and gave their ſubjects a ſhort glimpſe of light and knowledge. But the ignorance of the age was too powerful for their efforts and inſtitutions. The darkneſs returned, and ſettled over Europe, more thick and heavy than before.

As the inhabitants of Europe, during theſe centuries, were ſtrangers to the arts which embelliſh a poliſhed age, they were deſtitute of the virtues which abound among people who continue in a ſimple ſtate. Force of mind, a ſenſe of perſonal dignity, gallantry in enterprize, invincible perſeverance in execution, contempt of danger and death, are the characteriſtic virtues of uncivilized nations. But theſe are all the offspring of equality and independence, both which the feudal inſtitutions had deſtroyed. The ſpirit of domination corrupted the nobles; the yoke of ſervitude depreſſed the people; the generous ſentiments inſpired by a ſenſe of equality were extinguiſhed, and hardly any thing remained to be a check on ferocity and violence. Human ſociety is in its moſt corrupted ſtate, at that period when men have loſt their original independence and ſimplicity of manners, but have not attained that degree of refinement which introduces a ſenſe of decorum and of propriety in conduct, as a reſtraint on thoſe paſſions which lead to heinous crimes. Accordingly, a greater number of thoſe atrocious actions, which fill the mind of man with aſtoniſhment and horror, occur in the hiſtory of the centuries under review, than in that of any period of the ſame extent in the annals of Europe. If we open the hiſtory of Gregory of

[M] Note XII.

Tours, or of any contemporary author, we meet with a ſeries of deeds of cruelty, perfidy, and revenge, ſo wild and enormous as almoſt to exceed belief.

But, according to the obſervation of an elegant and profound hiſtorian*, there is an ultimate point of depreſſion, as well as of exaltation, from which human affairs naturally return in a contrary progreſs, and beyond which they never paſs either in their advancement or decline. When defects, either in the form or in the adminiſtration of government, occaſion ſuch diſorders in ſociety as are exceſſive and intolerable, it becomes the common intereſt to diſcover and to apply ſuch remedies as will moſt effectually remove them. Slight inconveniencies may be long overlooked or endured; but when abuſes grow to a certain pitch, the ſociety muſt go to ruin, or muſt attempt to reform them. The diſorders in the feudal ſyſtem, together with the corruption of taſte and manners conſequent upon theſe, which had gone on increaſing during a long courſe of years, ſeemed to have attained their utmoſt point of exceſs towards the cloſe of the eleventh century. From that æra, we may date the return of government and manners in a contrary direction, and can trace a ſucceſſion of cauſes and events which contributed, ſome with a nearer and more conſpicuous, others with a more remote and leſs perceptible influence, to aboliſh confuſion and barbariſm, and to introduce order, regularity, and refinement.

In pointing out and explaining theſe cauſes and events, it is not neceſſary to obſerve the order of time with a chronological accuracy; it is of more importance to keep in view their mutual connection and dependence, and to ſhew how the operation of one event, or one cauſe, prepared the way for another, and augmented its influence. We have hitherto been contemplating the progreſs of that darkneſs, which ſpread over Europe, from its firſt approach, to the period of greateſt obſcuration; a more pleaſant exerciſe be-

* Hume's Hiſtory of England, vol. ii. p. 441.

gins here; to obſerve the firſt dawnings of returning light, to mark the various acceſſions by which it gradually increaſed and advanced towards the full ſplendor of day.

I. The Cruſades, or expeditions in order to reſcue the Holy Land out of the hands of infidels, ſeem to be the firſt event that rouſed Europe from the lethargy in which it had been long ſunk, and that tended to introduce any conſiderable change in government or in manners. It is natural to the human mind to view thoſe places which have been diſtinguiſhed by being the reſidence of any illuſtrious perſonage, or the ſcene of any great tranſaction, with ſome degree of delight and veneration. To this principle muſt be aſcribed the ſuperſtitious devotion with which Chriſtians, from the earlieſt ages of the church, were accuſtomed to viſit that country which the Almighty had ſelected as the inheritance of his favourite people, and in which the Son of God had accompliſhed the redemption of mankind. As this diſtant pilgrimage could not be performed without conſiderable expence, fatigue and danger, it appeared the more meritorious, and came to be conſidered as an expiation for almoſt every crime. An opinion which ſpread with rapidity over Europe about the cloſe of the tenth and beginning of the eleventh century, and which gained univerſal credit, wonderfully augmented the number of credulous pilgrims, and increaſed the ardour with which they undertook this uſeleſs voyage. The thouſand years, mentioned by St. John*, were ſuppoſed to be accompliſhed, and the end of the world to be at hand. A general conſternation ſeized mankind; many relinquiſhed their poſſeſſions; and abandoning their friends and families, hurried with precipitation to the Holy Land, where they imagined that Chriſt would quickly appear to judge the world†.

* Revel. xx. 2, 3, 4.

† Chronic. Will. Godelli ap. Bouquet Recueil des Hiſtoriens de France, tom. x. p. 262. Vita Abbonis, ibid. p. 332. Chronic S

While Paleſtine continued ſubject to the Caliphs, they had encouraged the reſort of pilgrims to Jeruſalem; and conſidered this as a beneficial ſpecies of commerce, which brought into their dominions gold and ſilver, and carried nothing out of them but relics and conſecrated trinkets. But the Turks having conquered Syria about the middle of the eleventh century, pilgrims were expoſed to outrages of every kind from theſe fierce barbarians *. This change happening preciſely at the juncture when the panic terror, which I have mentioned, rendered pilgrimages moſt frequent, filled Europe with alarm and indignation. Every perſon who returned from Paleſtine related the dangers which he had encountered, in viſiting the holy city, and deſcribed with exaggeration the cruelty and vexations of the Turks.

When the minds of men were thus prepared, the zeal of a fanatical monk, who conceived the idea of leading all the forces of Chriſtendom againſt the infidels, and of driving them out of the Holy Land by violence, was ſufficient to give a beginning to that wild enterprize. *Peter the hermit*, for that was the name of this martial apoſtle, ran from province to province with a crucifix in his hand, exciting princes and people to this Holy War, and wherever he came kindled the ſame enthuſiaſtic ardour for it with which he himſelf was animated. The council of Placentia, where upwards of thirty thouſand perſons were aſſembled, pronounced the ſcheme to have been ſuggeſted by the immediate inſpiration of heaven. In the council of Clermont, ſtill more numerous, as ſoon as the meaſure was propoſed, all cried out with one voice, "It is the will of God." Perſons of all ranks catched the contagion; not only the gallant nobles of that age, with their martial followers, whom we may ſuppoſe apt to be allured by the boldneſs of a roman-

Pantaleonis ap. Eccard. Corp. Scrip. medi ævi, vol i. p. 909. Annaliſta Saxo, ibid. 576.

* Jo. Dan. Schoepflini de ſacris Gallorum in orientem expeditionibus, p. 4. Argent. 1726, 4to.

tic enterprize, but men in the more humble and pacific ſtations of life; eccleſiaſtics of every order, and even women and children, engaged with emulation in an undertaking, which was deemed ſacred and meritorious. If we may believe the concurring teſtimony of contemporary authors, ſix millions of perſons aſſumed the croſs *, which was the badge that diſtinguiſhed ſuch as devoted themſeves to this holy warfare. All Europe, ſays the Princeſs Anna Comnena, torn up from the foundation, ſeemed ready to precipitate itſelf in one united body upon Aſia †. Nor did the fumes of this enthuſiaſtic zeal evaporate at once; the frenzy was as laſting as it was extravagant. During two centuries, Europe ſeems to have had no object but to recover, or keep poſſeſſion of, the Holy Land; and through that period vaſt armies continued to march thither [N].

The firſt efforts of valour, animated by enthuſiaſm, were irreſiſtable; part of the leſſer Aſia, all Syria and Paleſtine, were wreſted from the infidels; the banner of the croſs was diſplayed on Mount Sion; Conſtantinople, the capital of the Chriſtian empire in the Eaſt, was afterwards ſeized by a body of thoſe adventurers, who had taken arms againſt the Mahometans, and an earl of Flanders, and his deſcendants, kept poſſeſſion of the imperial throne during half a century. But though the firſt impreſſion of the Cruſaders was ſo unexpected that they made their conqueſts with great eaſe, they found infinite difficulty in preſerving them. Eſtabliſhments ſo diſtant from Europe, ſurrounded by warlike nations animated with fanatical zeal ſcarcely inferior to that of the Cruſaders themſelves, were perpetually in danger of being overturned. Before the expiration of the thirteenth century, [1291,] the Chriſtians were driven out of all their Aſiatic poſſeſſions, in acquiring of which incredible numbers

* Fulcherius Carnotenſis ap. Bongarſii Geſta Dei per Francos, vol. i. 387. edit. Han. 1611.

† Alexias, lib. x. ap. Byz. ſcript. vol. xi. p. 224.

[N] Note XIII.

of men had periſhed, and immenſe ſums of money had been waſted. The only common enterprize in which the European nations ever engaged, and which they all undertook with equal ardour, remains a ſingular monument of human folly.

But from theſe expeditions, extravagant as they were, beneficial conſequences followed, which had neither been foreſeen nor expected. In their progreſs towards the Holy Land, the followers of the croſs marched through countries better cultivated, and more civilized than their own. Their firſt rendezvous was commonly in Italy, in which Venice, Genoa, Piſa, and other cities, had begun to apply themſelves to commerce, and had made conſiderable advances towards wealth as well as refinement. They embarked there, and landing in Dalmatia, purſued their route by land to Conſtantinople. Though the military ſpirit had been long extinct in the eaſtern Empire, and a deſpotiſm of the worſt ſpecies had annihilated almoſt every public virtue, yet Conſtantinople, having never felt the deſtructive rage of the barbarous nations, was the greateſt, as well as the moſt beautiful city in Europe, and the only one in which there remained any image of the ancient elegance in manners and arts. The naval power of the eaſtern Empire was conſiderable. Manufactures of the moſt curious fabric was carried on in its dominions. Conſtantinople was the chief mart in Europe, for the commodities of the Eaſt Indies. Although the Saracens and Turks had torn from the Empire many of its richeſt provinces, and had reduced it within very narrow bounds yet great wealth flowed into the capital from theſe various ſources, which not only cheriſhed ſuch a taſte for magnificence, but kept alive ſuch a reliſh for the ſciences as appears conſiderable, when compared with what was known in other parts of Europe. Even in Aſia, the Europeans, who had aſſumed the croſs, found the remains of the knowledge and arts which the example and encouragement of the Caliphs had diffuſed through their empire. Although the

attention of the hiſtorians of the Cruſades was fixed on other objects than the ſtate of ſociety and manners among the nations which they invaded, although moſt of them had neither taſte nor diſcernment enough to deſcribe theſe, they relate, however, ſuch ſignal acts of humanity and generoſity in the conduct of Saladin, as well as ſome other leaders of the Mahometans, as give us a very high idea of their manners. It was not poſſible for the Cruſaders to travel through ſo many countries, and to behold the various cuſtoms and inſtitutions, without acquiring information and improvement. Their views enlarged; their prejudices wore off; new ideas crowded into their minds; and they muſt have been ſenſible, on many occaſions, of the ruſticity of their own manners, when compared with thoſe of a more poliſhed people. Theſe impreſſions were not ſo ſlight as to be effaced upon their return to their native countries. A cloſe intercourſe ſubſiſted between the eaſt and weſt during two centuries; new armies were continually marching from Europe to Aſia, while former adventurers returned home and imported many of the cuſtoms to which they had been familiarized by a long reſidence abroad. Accordingly, we diſcover, ſoon after the commencement of the Cruſades, greater ſplendour in the courts of princes, greater pomp in public ceremonies, a more refined taſte in pleaſures and amuſements, together with a more romantic ſpirit of enterpriſe ſpreading gradually over Europe; and to theſe wild expeditions, the effect of ſuperſtition or folly, we owe the firſt gleams of light which tended to diſpel barbariſm and ignorance.

But theſe beneficial conſequences of the Cruſades took place ſlowly; their influence upon the ſtate of property, and conſequently of power, in the different kingdoms of Europe, was more immediate as well as diſcernible. The nobles who aſſumed the croſs, and bound themſelves to march to the Holy Land, ſoon perceived that great ſums were neceſſary towards defraying the expences of ſuch a diſtant expedition,

and enabling them to appear with ſuitable dignity at the head of their vaſſals. But the genius of the feudal ſyſtem was averſe to the impoſition of extraordinary taxes; and ſubjects in that age were unaccuſtomed to pay them. No expedient remained for levying the ſums requiſite, but the ſale of their poſſeſſions. As men were inflamed with romantic expectations of the ſplendid conqueſts which they hoped to make in Aſia, and poſſeſſed with ſuch zeal for recovering the Holy Land as ſwallowed up every other paſſion, they relinquiſhed their ancient inheritances without any reluctance, and for prices far below their value, that they might ſally forth as adventurers in queſt of new ſettlements in unknown countries. The monarchs of the great kingdoms in the weſt, none of whom had engaged in the firſt Cruſade, eagerly ſeized this opportunity of annexing conſiderable territories to their crowns at ſmall expence†. Beſides this, ſeveral great barons, who periſhed in the Holy War, having left no heirs, their fiefs reverted of courſe to their reſpective ſovereigns; and by theſe acceſſions of property, as well as power taken from the one ſcale and thrown into the other, the regal authority roſe in proportion as that of the ariſtocracy declined. The abſence, too, of many potent vaſſals, accuſtomed to controul and give law to their ſovereigns, afforded them an opportunity of extending their prerogative, and of acquiring a degree of weight in the conſtitution which they did not formerly poſſeſs. To theſe circumſtances, we may add, that as all who aſſumed the croſs were taken under the immediate protection of the church, and its heavieſt anathemas were denounced againſt ſuch as ſhould diſquiet or annoy thoſe who had devoted themſelves to this ſervice; the private quarrels and hoſtilities which baniſhed tranquillity from a feudal kingdom, were ſuſpended or extinguiſhed; a more general and ſteady adminiſtration of juſtice began to be introduced, and ſome advances were made towards the eſtabliſhment of

† Willelm. Malmſbur. Guibert. Abbas ap. Bongarſ. vol. i. 481.

attention of the hiſtorians of the Cruſades was fixed on other objects than the ſtate of ſociety and manners among the nations which they invaded, although moſt of them had neither taſte nor diſcernment enough to deſcribe theſe, they relate, however, ſuch ſignal acts of humanity and generoſity in the conduct of Saladin, as well as ſome other leaders of the Mahometans, as give us a very high idea of their manners. It was not poſſible for the Cruſaders to travel through ſo many countries, and to behold the various cuſtoms and inſtitutions, without acquiring information and improvement. Their views enlarged; their prejudices wore off; new ideas crowded into their minds; and they muſt have been ſenſible, on many occaſions, of the ruſticity of their own manners, when compared with thoſe of a more poliſhed people. Theſe impreſſions were not ſo ſlight as to be effaced upon their return to their native countries. A cloſe intercourſe ſubſiſted between the eaſt and weſt during two centuries; new armies were continually marching from Europe to Aſia, while former adventurers returned home and imported many of the cuſtoms to which they had been familiarized by a long reſidence abroad. Accordingly, we diſcover, ſoon after the commencement of the Cruſades, greater ſplendour in the courts of princes, greater pomp in public ceremonies, a more refined taſte in pleaſures and amuſements, together with a more romantic ſpirit of enterpriſe ſpreading gradually over Europe; and to theſe wild expeditions, the effect of ſuperſtition or folly, we owe the firſt gleams of light which tended to diſpel barbariſm and ignorance.

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† Willelm. Malmſbur. Guibert. Abbas ap. Bongarſ. vol. i. 481.

regular government in the ſeveral kingdoms of Europe* [O].

The commercial effects of the Cruſades were not leſs conſiderable than thoſe which I have already mentioned. The firſt armies under the ſtandard of the croſs, which Peter the hermit and Godfrey of Bouillon led through Germany and Hungary to Conſtantinople, ſuffered ſo much by the length of the march, as well as by the fierceneſs of the barbarous people who inhabited thoſe countries, that it deterred others from taking the ſame route; and rather than encounter ſo many dangers they choſe to go by ſea. Venice, Genoa and Piſa furniſhed the tranſports on which they embarked. The ſum which theſe cities received merely for freight from ſuch numerous armies was immenſe†. This, however, was but a ſmall part of what they gained by the expeditions to the Holy Land; the Cruſaders contracted with them for military ſtores and proviſions; their fleets kept on the coaſt as the armies advanced by land; and ſupplying them with whatever was wanting, engroſſed all the profits of a branch of commerce which, in every age, has been extremely lucrative. The ſucceſs which attended the arms of the Cruſaders was productive of advantages ſtill more permanent. There are charters yet extant, containing grants to the Venetians, Piſans, and Genoeſe of the moſt extenſive immunities in the ſeveral ſettlements which the Chriſtians made in Aſia. All the commodities which they imported or exported are thereby exempted from every impoſition; the property of entire ſuburbs in ſome of the maritime towns, and of large ſtreets in others, is veſted in them; and all queſtions, ariſing among perſons ſettled within their precincts, or who traded under their protection, are appointed to be tried by their own laws, and by judges of their own appointment‡. When the Cruſaders ſeized Conſtantinople, and placed one of their own leaders on the imperial throne, the Italian States were like-

* Du Cange Gloſſar. voc. *Cruce ſignatus*. Guil. Abbas ap. Bongarſ. vol. i. 480, 482. [O] Note XIV.

† Muratori Antiquit. Italic. medii ævi, vol. ii. 905. ‡ Ib. 906, &c.

wiſe gainers by that event. The Venetians, who had planned the enterprize, and took a conſiderable part in carrying it into execution, did not neglect to ſecure to themſelves the chief advantages redounding from its ſucceſs. They made themſelves maſters of part of the ancient Peloponneſus in Greece, together with ſome of the moſt fertile iſlands in the Archipelago. Many valuable branches of the commerce, which formerly centered in Conſtantinople, were transferred to Venice, Genoa, or Piſa. Thus a ſucceſſion of events, occaſioned by the Holy War, opened various ſources, from which wealth flowed in ſuch abundance into theſe cities†, as enabled them, in concurrence with another inſtitution, which ſhall be immediately mentioned, to ſecure their own liberty and independence.

II. The inſtitution to which I alluded was the forming of cities into communities, corporations, or bodies politic, and granting them the privilege of municipal juriſdiction, which contributed more, perhaps, than any other cauſe, to introduce regular government, police, and arts, and to diffuſe them over Europe. The feudal government had degenerated into a ſyſtem of oppreſſion. The uſurpations of the nobles were become unbounded and intolerable: they had reduced the great body of the people into a ſtate of actual ſervitude: the condition of thoſe dignified with the name of freemen, was often little preferable to that of the other. Nor was ſuch oppreſſion the portion of thoſe alone who dwelt in the country, and were employed in cultivating the eſtate of their maſter. Cities and villages found it neceſſary to hold of ſome great lord, on whom they might depend for protection, and became no leſs ſubject to his arbitrary juriſdiction. The inhabitants were deprived of thoſe rights, which, in ſocial life, are deemed moſt natural and inalienable. They could not diſpoſe of the effects which their own induſtry had acquired, either by a latter will, or by any

† Villehardouin Hiſt. de Conſtant. ſous l'Empereurs Francois, 105, &c.

deed executed during their life*. They had no right to appoint guardians for their children during their minority. They were not permitted to marry without purchaſing the conſent of the lord on whom they depended‡. If once they had commenced a law-ſuit, they durſt not terminate it by an accommodation, becauſe that would have deprived the lord, in whoſe court they pleaded, of the perquiſites due to him on paſſing ſentence§. Services of various kinds, no leſs diſgraceful than oppreſſive, were exacted from them without mercy or moderation. The ſpirit of induſtry was checked in ſome cities by abſurd regulations, and in others by unreaſonable exactions; nor would the narrow and oppreſſive maxims of a military ariſtocracy have permitted it ever to riſe to any degree of height or vigour‖.

But as ſoon as the cities of Italy began to turn their attention towards commerce, and to conceive ſome idea of the advantages which they might derive from it, they became impatient to ſhake off the yoke of their inſolent lords, and to eſtabliſh among themſelves ſuch a free and equal government, as would render property ſecure, and induſtry flouriſhing. The German emperors, eſpecially thoſe of the Franconian and Suabian lines, as the ſeat of their government was far diſtant from Italy, poſſeſſed a feeble and imperfect juriſdiction in that country. Their perpetual quarrels, either with the popes or with their own turbulent vaſſals, diverted their attention from the interior police of Italy, and gave conſtant employment to their arms. Theſe circumſtances encouraged the inhabitants of ſome of the Italian cities, towards the beginning of the eleventh century, to aſſume new privileges, to unite together more cloſely, and to form them-

* Dacherii Spiceleg. tom. xi. 374, 375. edit in 4to. Ordonances des Rois de France, tom. iii. 204. No. 2, 6.

‡ Ordonances des Rois de France, tom. i. p. 22, tom. iii. 203. No. 1. Murat. Antiq. Ital. vol. iv. p. 20. Dacher. Spicel. vol. xi. 32[illegible], 341.

§ Dacher. Spicel. vol ix. 182.

‖ M. l'Abbé Mably obſervat. ſur l'hiſt. de France, tom. ii. p. 2, 96.

ſelves into bodies politic under the government of laws eſtabliſhed by common conſent *. The rights, which many cities acquired by bold or fortunate uſurpations, others purchaſed from the emperors, who deemed themſelves gainers when they received large ſums for immunities which they were no longer able to withhold; and ſome cities obtained them gratuitouſly, from the generoſity or facility of the princes on whom they depended. The great increaſe of wealth which the Cruſades brought into Italy occaſioned a new kind of fermentation and activity in the minds of the people, and excited ſuch a general paſſion for liberty and independence, that, before the concluſion of the laſt Cruſade, all the conſiderable cities in that country had either purchaſed or had extorted large immunities from the emperors [P].

This innovation was not long known in Italy before it made its way into France. Louis le Gros, in order to create ſome power that might counterbalance thoſe potent vaſſals who controuled, or gave law to the crown, firſt adopted the plan of conferring new privileges on the towns ſituated within his own domain. Theſe privileges were called *charters of community*, by which he enfranchiſed the inhabitants, aboliſhed all marks of ſervitude, and formed them into corporations or bodies politic, to be governed by a council and magiſtrates of their own nomination. Theſe magiſtrates had the right of adminiſtering juſtice within their own precincts, of levying taxes, of embodying and training to arms the militia of the town, which took the field when required by the ſovereign, under the command of officers appointed by the community. The great barons imitated the example of their monarch, and granted like immunities to the towns within their territories. They had waſted ſuch great ſums in their expeditions to the Holy Land that they were eager to lay hold on this new expedient for raiſing money, by the ſale of thoſe charters of liberty. Though the inſtitution of communities was as repugnant to their maxims of

* Murat. Antiq. Ital. vol. iv. p. 5. [P] Note XV.

policy, as it was adverſe to their power, they diſregarded remote conſequences, in order to obtain preſent relief. In leſs than two centuries, ſervitude was aboliſhed in moſt of the towns in France, and they became free corporations, inſtead of dependant villages, without juriſdiction or privileges [Q.] Much about the ſame period, the great cities in Germany began to acquire like immunities, and laid the foundation of their preſent liberty and independence [R]. The practice ſpread quickly over Europe, and was adopted in Spain, England, Scotland, and all the other feudal kingdoms [S].

The good effects of this new inſtitution were immediately felt, and its influence on government as well as manners was no leſs extenſive than ſalutary. A great body of the people was releaſed from ſervitude, and from all the arbitrary and grievous impoſitions to which that wretched condition had ſubjected them. Towns upon acquiring the right of community, became ſo many little republics, governed by known and equal laws. Liberty was deemed ſuch an eſſential and characteriſtic part in their conſtitution, that if any ſlave took refuge in one of them, and reſided there during a year without being claimed, he was inſtantly declared a freeman, and admitted as a member of the community*.

As one part of the people owed their liberty to the erection of communities, another was indebted to them for their ſecurity. Such had been the ſtate of Europe during ſeveral centuries, that ſelf-preſervation obliged every man to court the patronage of ſome powerful baron, and in times of danger his caſtle was the place to which all reſorted for ſafety. But towns ſurrounded with walls, whoſe inhabitants were regularly trained to arms, and bound by intereſt, as well as by the moſt ſolemn engagements, reciprocally to defend each o-

[Q.] Note XVI. [R] Note XVII.
[S] Note XVIII.
* Statut. Humberti Bellojoci Dacher. Spicel. vol. ix. 182, 185. Charta Comit. Forenſ. ibid. 193.

ther, afforded a more commodious and ſecure retreat. The nobles began to be conſidered as of leſs importance when they ceaſed to be the ſole guardians to whom the people could look up for protection againſt violence.

If the nobility ſuffered ſome diminution of their credit and power by the privileges granted to the cities, the crown acquired an increaſe of both. As there were no regular troops kept on foot in any of the feudal kingdoms, the monarch could bring no army into the field, but what was compoſed of ſoldiers furniſhed by the crown vaſſals, always jealous of the regal authority; nor had he any funds for carrying on the public ſervice but ſuch as they granted him with a very ſparing hand. But when the members of communities were permitted to bear arms, and were trained to the uſe of them, this in ſome degree ſupplied the firſt defect, and gave the crown the command of a body of men, independent of its great vaſſals. The attachment of the cities to their ſovereigns, whom they reſpected as the firſt authors of their liberties, and whom they were obliged to court as the protectors of their immunities againſt the domineering ſpirit of the nobles, contributed ſomewhat towards removing the ſecond evil, as, on many occaſions, it procured the crown ſupplies of money, which added new force to government†.

The acquiſition of liberty made ſuch a happy change in the condition of all the members of communities, as rouſed them from that inaction into which they had been ſunk by the wretchedneſs of their former ſtate. The ſpirit of induſtry revived. Commerce became an object of attention, and began to flouriſh. Population increaſed. Independence was eſtabliſhed; and wealth flowed into cities which had long been the ſeat of poverty and oppreſſion. Wealth was accompanied by its uſual attendants, oſtentation and luxury; and though the former was formal and cumberſome, and the latter inelegant, they led gradually to greater refinement in

† Ordon. des Rois de France, tom. i. 602, 785; tom. ii. 318, 422.

manners, and in the habits of life. Together with this improvement in manners, a more regular ſpecies of government and police was introduced. As cities grew to be more populous, and the occaſions of intercourſe among men increaſed, ſtatutes and regulations multiplied of courſe, and all became ſenſible that their common ſafety depended on obſerving them with exactneſs, and on puniſhing ſuch as violated them, with promptitude and rigour. Laws and ſubordination, as well as poliſhed manners, taking their riſe in cities, diffuſed themſelves inſenſibly through the reſt of the ſociety.

III. The inhabitants of cities, having obtained perſonal freedom and municipal juriſdiction, ſoon acquired civil liberty and political power. It was a fundamental principle in the feudal ſyſtem of policy, that no freeman could be ſubjected to new laws or taxes unleſs by his own conſent. In conſequence of this, the vaſſals of every baron were called to his court, in which they eſtabliſhed, by mutual conſent, ſuch regulations as they deemed moſt beneficial to their ſmall ſociety, and granted their ſuperiors ſuch ſupplies of money, as were proportioned to their abilities, or to his wants. The barons themſelves, conformably to the ſame maxim, were admitted into the ſupreme aſſembly of the nation, and concurred with the ſovereign in enacting laws, or in impoſing taxes. As the ſuperior lord, according to the original plan of feudal policy, retained the direct property of thoſe lands which he granted, in temporary poſſeſſion, to his vaſſals; the law, even after fiefs became hereditary, ſtill ſuppoſed this original practice to ſubſiſt. The great council of each nation, whether diſtinguiſhed by the name of a Parliament, a Diet, the Cortes, or the States-general, was compoſed entirely of ſuch barons, and dignified eccleſiaſtics, as held immediately of the crown. Towns, whether ſituated within the royal domain or on the lands of a ſubject, depended originally for protection on the lord of whom they held. They

had no legal name, no political exiſtence, which could entitle them to be admitted into the legiſlative aſſembly, or could give them any authority there. But as ſoon as they were enfranchiſed, and formed into bodies corporate, they became legal and independent members of the conſtitution, and acquired all the rights eſſential to freemen. Amongſt theſe, the moſt valuable was, the privilege of a deciſive voice in enacting public laws, and granting national ſubſidies. It was natural for cities, accuſtomed to a form of municipal government, according to which no regulation could be eſtabliſhed within the community, and no money could be raiſed but by their own conſent, to claim this privilege. The wealth, the power, and conſideration, which they acquired on recovering their liberty, added weight to their claim; and favourable events happened, or fortunate conjunctures occured, in the different kingdoms of Europe, which facilitated their obtaining poſſeſſion of this important right. In England, one of the firſt countries in which the repreſentatives of boroughs were admitted into the great council of the nation, the barons who took arms againſt Henry III. [A. D. 1265] ſummoned them to attend parliament, in order to add greater popularity to their party, and to ſtrengthen the barrier againſt the encroachments of regal power. In France, Philip the Fair, a monarch no leſs ſagacious than enterpriſing, conſidered them as inſtruments which might be employed with equal advantage to extend the royal prerogative, to counterbalance the exorbitant power of the nobles, and to facilitate the impoſition of new taxes. With theſe views, he introduced the deputies of ſuch towns as were formed into communities, into the States-general of the nation*. In the empire, the wealth and immunities of the imperial cities placed them on a level with the moſt conſiderable members of the Germanic body. Conſcious of their own power and dignity, they pretended to the privilege of forming a ſepa-

* Paſquier Recherches de la France, p. 81. edit. Par. 1633.

rate bench in the diet [A.D. 1293]; and made good their pretenſion†.

But in what way ſoever the repreſentatives of cities firſt gained a place in the legiſlature, that event had great influence on the form and genius of government. It tempered the rigour of ariſtocratical oppreſſion with a proper mixture of popular liberty: it ſecured to the great body of the people, who had formerly no repreſentatives, active and powerful guardians of their rights and privileges: it eſtabliſhed an intermediate power between the king and the nobles, to which each had recourſe alternately, and which at ſome times oppoſed the uſurpations of the former, on other occaſions checked the encroachments of the latter. As ſoon as the repreſentatives of communities gained any degree of credit and influence in the legiſlature, the ſpirit of laws became different from what it had formerly been; it flowed from new principles; it was directed towards new objects; equality, order, the public good, and the redreſs of grievances, were phraſes and ideas brought into uſe, and which grew to be familiar in the ſtatutes and juriſprudence of the European nations. Almoſt all the efforts in favour of liberty in every country of Europe, have been made by this new power in the legiſlature. In proportion as it roſe to conſideration and influence, the ſeverity of the ariſtocratical ſpirit decreaſed; and the privileges of the people became gradually more extenſive, as the ancient and exorbitant juriſdiction of the nobles was abridged [T].

IV. The inhabitants of towns having been declared free by the charters of communities, that part of the people which reſided in the country, and was employed in agriculture, began to recover liberty by enfranchiſement. During the rigour of feudal government, as hath been already obſerved, the great body of the lower people was reduced to

† Pfeffel Abrege de l'hiſtoire & droit d'Allemagne, p. 408, 451.

[T] Note XIX.

ſervitude. They were ſlaves fixed to the ſoil which they cultivated, and together with it were transferred from one proprietor to another, by ſale, or by conveyance. The ſpirit of feudal policy did not favour the enfranchiſement of that order of men. It was an eſtabliſhed maxim, that no vaſſal could legally diminiſh the value of a fief, to the detriment of the lord from whom he had received it. In conſequence of this, manumiſſion by the authority of the immediate maſter was not valid; and unleſs it was confirmed by the ſuperior lord of whom he held, ſlaves belonging to the fief did not acquire a complete right to their liberty. Thus it became neceſſary to aſcend through all the gradations of feudal holding to the king, the lord paramount*. A form of procedure ſo tedious and troubleſome, diſcouraged the practice of manumiſſion. Domeſtic or perſonal ſlaves often obtained liberty from the humanity or beneficence of their maſters, to whom they belonged in abſolute property. The condition of ſlaves fixed to the ſoil, was much more unalterable.

But the freedom and independence which one part of the people had obtained by the inſtitution of communities, inſpired the other with the moſt ardent deſire of acquiring the ſame privileges; and their ſuperiors, ſenſible of the various advantages which they had derived from their former conceſſions to their dependents, were leſs unwilling to gratify them by the grant of new immunities. The enfranchiſement of ſlaves became more frequent; and the monarchs of France, prompted by neceſſity no leſs than by their inclination to reduce the power of the nobles, endeavoured to render it general [A. D. 1315 and 1318]. Louis X. and Philip the Long iſſued ordinances, declaring, "That as all men were by nature freeborn, and as their kingdom was called the kingdom of Franks, they determined that it ſhould be ſo in reality as well as in name; therefore they appointed

* Etabliſſemens de St. Louis, liv. ii. ch. 34. Ordon. tom. i. 383, not. (a).

that enfranchiſements ſhould be granted throughout the whole kingdom, upon juſt and reaſonable conditions*." Theſe edicts were carried into immediate execution within the royal domain. The example of their ſovereigns, together with the expectation of conſiderable ſums which they might raiſe by this expedient, led many of the nobles to ſet their dependants at liberty; and ſervitude was gradually aboliſhed in almoſt every province of the kingdom [U]. In Italy, the eſtabliſhment of republican government in their great cities, the genius and maxims of which were extremely different from thoſe of the feudal policy, together with the ideas of equality, which the progreſs of commerce had rendered familiar, gradually introduced the practice of enfranchiſing the ancient *predial* ſlaves. In ſome provinces of Germany, the perſons who had been ſubject to this ſpecies of bondage were releaſed; in others, the rigour of their ſtate was mitigated. In England, as the ſpirit of liberty gained ground, the very name and idea of perſonal ſervitude, without any formal interpoſition of the legiſlature to prohibit it, was totally baniſhed.

The effects of ſuch a remarkable change in the condition of ſo great a part of the people, could not fail of being conſiderable and extenſive. The huſbandman, maſter of his own induſtry, and ſecure of reaping for himſelf the fruits of his labour, became the farmer of the ſame fields where he had formerly been compelled to toil for the benefit of another. The odious names of maſter and of ſlave, the moſt mortifying and depreſſing of all diſtinctions to human nature, were aboliſhed. New proſpects opened, and new incitements to ingenuity and enterprize preſented themſelves to thoſe who were emancipated. The expectation of bettering their fortune, as well as that of raiſing themſelves to a more honourable condition, concurred in calling forth their activity and genius; and a numerous claſs of men, who formerly had no political exiſtence, and were employed merely as inſtruments of

* Ordon. tom. i. p. 583, 653. [U] Note XX.

labour, became useful citizens, and contributed towards augmenting the force or riches of the society which adopted them as members.

V. The various expedients which were employed in order to introduce a more regular, equal, and vigorous administration of justice, contributed greatly towards the improvement of society. What were the particular modes of dispensing justice, in their several countries, among the various barbarous nations, which over-ran the Roman Empire, and took possession of its different provinces, cannot now be determined with certainty. We may conclude, from the form of government established among them, as well as from their ideas concerning the nature of society, that the authority of the magistrate was extremely limited, and the independence of individuals proportionally great. History and records, as far as these reach back, justify this conclusion, and represent the ideas and exercise of justice in all the countries of Europe, as little different from those which must take place in the most simple state of civil life. To maintain the order and tranquillity of society by the regular execution of known laws; to inflict vengeance on crimes destructive of the peace and safety of individuals, by a prosecution carried on in the name and by the authority of the community; to consider the punishment of criminals as a public example to deter others from violating the laws; were objects of government little understood in theory, and less regarded in practice. The magistrate could hardly be said to hold the sword of justice; it was left in the hands of private persons. Resentment was almost the sole motive for prosecuting crimes; and to gratify that passion, was considered as the chief end in punishing them. He who suffered the wrong, was the only person who had a right to pursue the aggressor, and to exact or remit the punishment. From a system of judicial procedure, so crude and defective, that it seems to be scarcely compatible with the subsistence of civil society, disorder and anarchy flowed. Superstition concurred with

this ignorance concerning the nature of government, in obſtructing the adminiſtration of juſtice, or in rendering it capricious and unequal. To provide remedies for theſe evils, ſo as to give a more regular courſe to juſtice, was, during ſeveral centuries, one great object of political wiſdom. The regulations for this purpoſe may be reduced to three general heads: To explain theſe, and to point out the manner in which they operated, is an important article in the hiſtory of ſociety among the nations of Europe.

1. The firſt conſiderable ſtep towards eſtabliſhing an equal adminiſtration of juſtice, was the aboliſhment of the right which individuals claimed of waging war with each other, in their own name, and by their own authority. To repel injuries, and to revenge wrongs, is no leſs natural to man, than to cultivate friendſhip; and while ſociety remains in its moſt ſimple ſtate, the former is conſidered as a perſonal right no leſs alienable than the latter. Nor do men in this ſituation deem that they have a title to redreſs their own wrongs alone; they are touched with the injuries done to thoſe with whom they are connected, or in whoſe honour they are intereſted, and are no leſs prompt to avenge them. The ſavage, how imperfectly ſoever he may comprehend the principles of political union, feels warmly the ſentiments of ſocial affection, and the obligations ariſing from the ties of blood. On the appearance of an injury or affront offered to his family or tribe, he kindles into rage, and purſues the authors of it with the keeneſt reſentment. He conſiders it as cowardly to expect redreſs from any arm but his own, and as infamous to give up to another the right of determining what reparation he ſhould accept, or with what vengeance he ſhould reſt ſatisfied.

The maxims and practice of all uncivilized nations, with reſpect to the proſecution and puniſhment of offenders, particularly thoſe of the ancient Germans, and other barbarians who invaded the Roman Empire, are perfectly conform-

able to these ideas *. While they retained their native simplicity of manners, and continued to be divided into small tribes or societies, the defects in this imperfect system of criminal jurisprudence (if it merits that name) were less sensibly felt. When they came to settle in the extensive provinces which they had conquered, and to form themselves into great monarchies; when new objects of ambition presenting themselves, increased both the number and the violence of their dissensions; they ought to have adopted new maxims concerning the redress of injuries, and to have regulated, by general and equal laws, that which they formerly left to be directed by the caprice of private passion. But fierce and haughty chieftains, accustomed to avenge themselves on such as had injured them, did not think of reinquishing a right which they considered as a privilege of their order, and a mark of their independence. Laws enforced by the authority of princes and magistrates, who possessed little power, commanded no great degree of reverence. The administration of justice among rude illiterate people, was not so accurate, or decisive, or uniform, as to induce men to submit implicitly to its determinations. Every offended baron buckled on his armour, and sought redress at the head of his vassals. His adversary met him in like hostile array. Neither of them appealed to impotent laws, which could afford them no protection. Neither of them would submit points, in which their honour and their passions were warmly interested, to the slow determination of a judicial inquiry. Both trusted to their swords for the decision of the contest. The kindred and dependants of the aggressor, as well as of the defender, were involved in the quarrel They had not even the liberty of remaining neutral. Such as refused to act in concert with the party to which they belonged, were not only exposed to infamy, but subjected to legal penalties.

The different kingdoms of Europe were torn and afflict-

* Tacit. de Mor. German. cap. 21. Vell. Paterc. lib ii. c. 118.

vate tranquillity. As the right of private war left many of the quarrels among individuals to be decided, like thoſe between nations, by arms; the form of trial by judicial combat, which was eſtabliſhed in every country of Europe, baniſhed equity from courts of juſtice, and rendered chance or force the arbiter of their determinations. In civilized nations, all tranſactions of any importance are concluded in writing. The exhibition of the deed or inſtrument is full evidence of the fact, and aſcertains with preciſion what each party has ſtipulated to perform. But among a rude people, when the arts of reading and writing were ſuch uncommon attainments, that to be maſter of either entitles a perſon to the appellation of a clerk or learned man, ſcarcely any thing was committed to writing but treaties between princes, their grants and charters to their ſubjects, or ſuch tranſactions between private parties as were of extraordinary conſequence, or had an extenſive effect. The greater part of affairs in common life and buſineſs were carried on by verbal contracts or promiſes. This in many civil queſtions, not only made it difficult to bring proof ſufficient to eſtabliſh any claim, but encouraged falſehood and fraud, by rendering them extremely eaſy. Even in criminal caſes, where a particular fact muſt be aſcertained, or an accuſation muſt be diſproved, the nature and effect of legal evidence were little underſtood by barbarous nations. To define with accuracy that ſpecies of evidence which a court had reaſon to expect; to determine when it ought to inſiſt on poſitive proof, and when it ſhould be ſatisfied with a proof from circumſtances; to compare the teſtimony of diſcordant witneſſes, and to fix the degree of credit due to each; were diſcuſſions too intricate and ſubtile for the juriſprudence of ignorant ages. In order to avoid encumbering themſelves with theſe, a more ſimple form of procedure was introduced into courts as well civil as criminal. In all caſes where the notoriety of the fact did not furniſh the cleareſt and moſt direct evidence, the perſon accuſed, or he againſt whom an action was brought,

was called legally, or offered voluntarily, to purge himſelf by oath; and upon his declaring his innocence, he was inſtantly acquitted†. This abſurd practice effectually ſcreened guilt and fraud from detection and puniſhment, by rendering the temptation to perjury ſo powerful, that it was not eaſy to reſiſt it. The pernicious effects of it were ſenſibly felt; and in order to guard againſt them, the laws ordained, that oaths ſhould be adminiſtered with great ſolemnity, and accompanied with every circumſtance which could inſpire religious reverence, or ſuperſtitious terror*. This, however, proved a feeble remedy: theſe ceremonious rites became familiar, and their impreſſion on the imagination gradually diminiſhed; men who could venture to diſregard truth, were not apt to ſtartle at the ſolemnities of an oath. Their obſervation of this, put legiſlators upon deviſing a new expedient for rendering the purgation by oath more certain and ſatisfactory. They required the perſon accuſed to appear with a certain number of freemen, his neighbours or relations, who corroborated the oath which he took, by ſwearing that they believed all that he uttered to be true. Theſe were called *Compurgators*, and their number varied according to the importance of the ſubject in diſpute, or the nature of the crime with which a perſon was charged‡. In ſome caſes, the concurrence of no leſs than three hundred of theſe auxiliary witneſſes was requiſite to acquit the perſon accuſed§. But even this device was found to be ineffectual. It was a point of honour with every man in Europe, during ſeveral ages, not to deſert the chief on whom he depended, and to ſtand by thoſe with whom the ties of blood connected him. Whoever then was bold enough to violate the laws, was ſure of devoted adherents, willing to abet, and eager to ſerve him

† Leg. Burgund. tit. 8, & 45, Leg. Aleman. tit. 89. Let Baiwar. tit. 8. § 5, 2, &c.

* Du Cange Gloſſar. voc. *Juramentum*, vol. iii. p. 1607. Edit. Benedict. ‡ Ibid. v. iii. p. 1599.

§ Spelman Gloſſar. voc. *Aſſath*. Gregor. Turon. Hiſt. lib. viii. c. 9.

in whatever manner he required. The formality of calling compurgators proved an apparent, not a real ſecurity, againſt falſehood and perjury; and the ſentences of courts, while they continued to refer every point in queſtion to the oath of the defendant, became ſo flagrantly iniquitous, as excited univerſal indignation againſt this method of procedure†.

Senſible of theſe defects, but ſtrangers to the manner of correcting them, or of introducing a more proper form, our anceſtors, as an infallible method of diſcovering truth, and of guarding againſt deception, appealed to Heaven, and referred every point in diſpute to be determined, as they imagined, by the deciſions of unerring wiſdom and impartial juſtice. The perſon accuſed, in order to prove his innocence, ſubmitted to trial, in certain caſes, either by plunging his arm in boiling water; or by lifting a red-hot iron with his naked hand; or by walking bare-foot over burning ploughſhares; or by other experiments equally perilous and formidable. On other occaſions, he challenged his accuſer to fight him in ſingle combat. All theſe various forms of trial were conducted with many devout ceremonies; the miniſters of religion were employed, the Almighty was called upon to interpoſe for the manifeſtation of guilt, and for the protection of innocence; and whoever eſcaped unhurt, or came off victorious, was pronounced to be acquitted by the *Judgment of God*‡.

Among all the whimſical and abſurd inſtitutions which owe their exiſtence to the weakneſs of humam reaſon, this, which ſubmitted queſtions that affected the property, the reputation, and the lives of men, to the determination of chance, or of bodily ſtrength and addreſs, appears to be the moſt extravagant and prepoſterous. There were circumſtances, however, which led the nations of Europe to conſider this equivocal mode of deciding any point in conteſt,

† Leg. Langobard. lib. ii. tit. 55. § 34.
‡ Murat. diſſertatio de judiciis Dei Antiquit. Ital. vol. iii. p. 612.

as a direct appeal to Heaven, and a certain method of discovering its will. As men are unable to comprehend the manner in which the Almighty carries on the government of the univerſe, by equal, fixed, and general laws, they are apt to imagine, that in every caſe which their paſſions or intereſt render important in their own eyes, the Supreme Ruler of all ought viſibly to diſplay his power in vindicating innocence and puniſhing guilt. It requires no inconſiderable degree of ſcience and philoſophy to correct this popular error. But the ſentiments prevalent in Europe during the dark ages, inſtead of correcting, ſtrengthened it. Religion, for ſeveral centuries, conſiſted chiefly in believing the legendary hiſtory of thoſe ſaints whoſe names crowd and diſgrace the Romiſh calendar. The fabulous tales concerning their miracles, had been declared authentic by the bulls of popes, and the decrees of councils: they made the great ſubject of the inſtructions which the clergy offered to the people, and were received by them with implicit credulity and admiration. By attending to theſe, men were accuſtomed to believe that the eſtabliſhed laws of nature might be violated on the moſt frivolous occaſions, and were taught to look rather for particular and extraordinary acts of power under the divine adminiſtration, than to contemplate the regular progreſs and execution of a general plan. One ſuperſtition prepared the way for another; and whoever believed that the Supreme Being had interpoſed miraculouſly on thoſe trivial occaſions mentioned in legends, could not but expect his intervention in matters of greater importance, when ſolemnly referred to his deciſion.

With this ſuperſtitious opinion, the martial ſpirit of Europe, during the middle ages, concurred in eſtabliſhing the mode of trial by judicial combat. To be ready to maintain with his ſword whatever his lips had uttered, was the firſt maxim of honour with every gentleman. To aſſert their own rights by force of arms, to inflict vengeance on thoſe who had injured or affronted them, were the diſtinction and

pride of high-ſpirited nobles. The form of trial by combat conciding with this maxim, flattered and gratified theſe paſſions. Every man was the guardian of his own honour, and of his own life; the juſtice of his cauſe, as well as his future reputation, depended on his own courage and proweſs. This mode of deciſion was conſidered, accordingly, as one of the happieſt efforts of wiſe policy; and as ſoon as it was introduced, all the forms of trial by fire or water, and other ſuperſtitious experiments, fell into diſuſe, or were employed only in controverſies between perſons of inferior rank. As it was the privilege of a gentleman to claim the trial by combat, it was quickly authoriſed over all Europe, and received in every country with equal ſatisfaction. Not only queſtions concerning uncertain or conteſted facts, but general and abſtract points in law, were determined by the iſſue of a combat; and the latter was deemed a method of diſcovering truth more liberal, as well as more ſatisfactory, than that by inveſtigation and argument. Not only might parties, whoſe minds were exaſperated by the eagerneſs and the hoſtility of oppoſition, defy their antagoniſts, and require him to make good his charge, or to prove his innocence, with his ſword; but witneſſes who had no intereſt in the iſſue of the queſtion, though called to declare the truth by laws which ought to have afforded them protection, were equally expoſed to the danger of a challenge, and equally bound to aſſert the veracity of their evidence by dint of arms. To complete the abſurdities of this military juriſprudence, even the character of a judge was not ſacred from its violence. Any one of the parties might interrupt a judge when about to deliver his opinion; might accuſe him of iniquity and corruption in the moſt reproachful terms, and throwing down the gauntlet, might challenge him to defend his integrity in the field; nor could he, without infamy, refuſe to accept the defiance, or decline to enter the liſts againſt ſuch an adverſary.

Thus the form of trial by combat, like other abuſes,

ſpread gradually, and extended to all perſons, and almoſt to all caſes. Eccleſiaſtics, women, minors, ſuperannuated and infirm perſons, who could not with decency or juſtice be compelled to take arms, or to maintain their own cauſe, were obliged to produce champions, who offered from affection, or were engaged by rewards, to fight their battles. The ſolemnities of a judicial combat were ſuch as were natural in an action, which was conſidered both as a formal appeal to God, and as the final deciſion of queſtions of the higheſt moment. Every circumſtance relating to them was regulated by the edicts of princes, and explained in the comments of lawyers, with a minute and even ſuperſtitious accuracy. Skill in theſe laws and rights was frequently the only ſcience of which warlike nobles boaſted, or which they were ambitious to attain†.

By this barbarous cuſtom, the natural courſe of proceeding, both in civil and criminal queſtions, was entirely perverted. Force uſurped the place of equity in courts of judicature, and juſtice was baniſhed from her proper manſion. Diſcernment, learning, integrity, were qualities leſs neceſſary to a judge, than bodily ſtrength and dexterity in the uſe of arms. Daring courage, and ſuperior vigour or addreſs, were of more moment towards ſecuring the favourable iſſue of a ſuit, than the equity of a cauſe, or the clearneſs of the evidence. Men, of courſe, applied themſelves to cultivate the talents which they found to be of great utility. As ſtrength of body and addreſs in arms were no leſs requiſite in thoſe liſts which they were obliged to enter in defence of their private rights, than in the field of battle, where they met the enemies of their country, it became the great object of their education, as well as the chief employment of life, to acquire theſe martial accompliſhments. The adminiſtration of juſtice, inſtead of accuſtoming men to liſt-

† See a curious diſcourſe concerning the laws of judicial combat, by Thomas of Woodſtock, duke of Glouceſter, uncle to Richard II. in Spelman's Gloſſar. voc. *Campus*.

en to the voice of equity, or to reverence the deciſions of law, added to the ferocity of their manners, and taught them to conſider force as the great arbiter of right and wrong.

Theſe pernicious effects of the trial by combat were ſo obvious, that they did not altogether eſcape the view of the unobſerving age in which it was introduced. The clergy, from the beginning, remonſtrated againſt it as repugnant to the ſpirit of Chriſtianity, and ſubverſive of juſtice and order†. But the maxims and paſſions which favoured it, had taken ſuch hold of the minds of men, that they diſregarded admonitions and cenſures, which, on other occaſions, would have ſtruck them with terror. The evil was too great and inveterate to yield to that remedy, and continuing to increaſe, the civil power at length found it neceſſary to interpoſe. Conſcious, however, of their own limited authority, monarchs proceeded with caution, and their firſt attempts to reſtrain, or to ſet any bounds to this practice, were extremely feeble. One of the earlieſt reſtrictions of this practice which occurs in the hiſtory of Europe, is that of Henry I. of England. It extended no farther than to prohibit the trial by combat in queſtions concerning property of ſmall value*. Louis VII. of France imitated his example, and iſſued an edict to the ſame effect‡. St. Louis, whoſe ideas as a legiſlator were far ſuperior to thoſe of his age, endeavoured to introduce a more perfect juriſprudence, and to ſubſtitute the trial by evidence, in place of that by combat. But his regulations, with reſpect to this, were confined to his own domains; for the great vaſſals of the crown poſſeſſed ſuch independent authority, and were ſo fondly attached to the ancient practice, that he had not power to extend it to the whole kingdom. Some barons voluntarily adopted his regulations. The ſpirit of courts of juſtice became averſe to the mode of deciſion by combat, and diſcouraged it on every occaſion. The nobles, nevertheleſs, thought it ſo honourable to depend

† Du Cange Gloſſar. voc. *Duellum*, vol. ii. p. 1675.
* Bruſſel Uſage des Fiefs, vol. ii. p. 962. ‡ Ordon. tom. 1. p. 16.

for the ſecurity of their lives and fortunes on their own courage alone, and contended with ſo much vehemence for the preſervation of this favourite privilege of their order, that the ſucceſſors of St. Louis, unable to oppoſe, and afraid of offending ſuch powerful ſubjects, were obliged not only to tolerate, but to authorize the practice which he had attempted to aboliſh †. In other countries of Europe, efforts equally zealous were employed to maintain the eſtabliſhed cuſtom; and ſimilar conceſſions were extorted from their reſpective ſovereigns. It continued, however, to be an object of policy with every monarch of abilities or vigour to explode the trial by combat; and various edicts were iſſued for this purpoſe. But the obſervation which was made concerning the right of private war, is equally applicable to the mode of trial under review. No cuſtom, how abſurd ſoever it may be, if it has ſubſiſted long, or derives its force from the manners and prejudices of the age in which it prevails, was ever aboliſhed by the bare promulgation of laws and ſtatutes. The ſentiments of the people muſt change, or ſome new power, ſufficient to counteract the prevalent cuſtom, muſt be introduced. Such a change accordingly took place in Europe, as ſcience gradually increaſed, and ſociety advanced towards more perfect order. In proportion as the prerogative of princes extended, and came to acquire new force, a power, intereſted in ſuppreſſing every practice favourable to the independence of the nobles, was introduced. The ſtruggle, nevertheleſs, ſubſiſted for ſeveral centuries; ſometimes the new regulations and ideas ſeemed to gain ground; ſometimes ancient habits recurred: and though, upon the whole, the trial by combat went more and more into diſuſe, yet inſtances of it occur, as late as the ſixteenth century, in the hiſtory both of France and of England. In proportion as it declined, the regular adminiſtration of juſtice was reſtored, the proceedings of courts were directed by known laws, the ſtudy of theſe became an object of attention to judges, and

† Ordon. tom. i. p. 328, 390, 435.

the people of Europe advanced faſt towards civility, when this great cauſe of the ferocity of their manners was removed [Y].

3. By authorizing the right of appeal from the courts of the barons to thoſe of the king, and ſubjecting the deciſions of the former to the review of the latter, a new ſtep, not leſs conſiderable than thoſe which I have already mentioned, was taken towards eſtabliſhing the regular, conſiſtent, and vigorous adminiſtration of juſtice. Among all the encroachments of the feudal nobles on the prerogative of their monarchs, their uſurping the adminiſtration of juſtice with ſupreme authority, both in civil and criminal cauſes, within the precincts of their own eſtates, was the moſt ſingular. In other nations, ſubjects have contended with their ſovereigns, and have endeavoured to extend their own power and privileges; but in the hiſtory of their ſtruggles and pretenſions, we diſcover nothing ſimilar to this right which the feudal barons claimed, and obtained. It muſt have been ſomething peculiar in their genius and manners that ſuggeſted this idea, and prompted them to inſiſt on ſuch a claim. Among the rude people who conquered the various provinces of the Roman Empire, and eſtabliſhed new kingdoms there, the paſſion of reſentment, too impetuous to bear control, was permitted to remain almoſt unreſtrained by the authority of laws. The perſon offended, as has been obſerved, retained not only the right of proſecuting, but of puniſhing his adverſary. To him it belonged to inflict ſuch vengeance as ſatiated his rage, or to accept of ſuch ſatisfaction as appeaſed it. But while fierce barbarians continued to be the ſole judges in their own cauſe, their enmities were implacable and immortal; they ſet no bounds either to the degree of their vengeance, or to the duration of their reſentment. The exceſſes which this occaſioned, proved ſo deſtructive of peace and order in ſociety, as to render it neceſſary to deviſe ſome remedy. At firſt, recourſe was had to arbi-

[Y] Note XXII.

trators, who by perſuaſion or intreaty prevailed on the party offended to accept of a fine or compoſition from the aggreſſor, and to drop all farther proſecution. But as ſubmiſſion to perſons who had no legal or magiſterial authority was altogether voluntary, it became neceſſary to eſtabliſh judges, with power ſufficient to enforce their own deciſions. The leader whom they were accuſtomed to follow and to obey, whoſe courage they reſpected, and in whoſe integrity they placed confidence, was the perſon to whom a martial people naturally committed this important prerogative. Every chieftain was the commander of his tribe in war, and their judge in peace. Every baron led his vaſſals to the field, and adminiſtered juſtice to them in his hall. Their high-ſpirited dependants would not have recognized any other authority, or have ſubmitted to any other juriſdiction. But in times of turbulence and violence, the exerciſe of this new function was attended not only with trouble, but with danger. No perſon could aſſume the character of a judge, if he did not poſſeſs power ſufficient to protect the one party from the violence of private revenge, and to compel the other to accept of ſuch reparation as he enjoined. In conſideration of the extraordinary efforts which this office required, judges, beſides the fine which they appointed to be paid as a compenſation to the perſon or family who had been injured, levied an additional ſum as a recompence for their own labour; and in all the feudal kingdoms the latter was not only as preciſely aſcertained, but as regularly exacted, as the former.

Thus, by the natural operation of circumſtances peculiar to the manners or political ſtate of the feudal nations, ſeparate and territorial juriſdictions came not only to be eſtabliſhed in every kingdom, but were eſtabliſhed in ſuch a way, that the intereſt of the barons concurred with their ambition in maintaining and extending them. It was not merely a point of honour with the feudal nobles to diſpenſe juſtice to their vaſſals; but from the exerciſe of that power aroſe one capital branch of their revenue; and the emoluments

of their courts were frequently the main ſupport of their dignity. It was with infinite zeal that they aſſerted and defended this high privilege of their order. By this inſtitution, however, every kingdom in Europe was ſplit into as many ſeparate principalities as it contained powerful barons. Their vaſſals, whether in peace or in war, were hardly ſenſible of any authority, but that of their immediate ſuperior lord. They felt themſelves ſubject to no other command. They were amenable to no other juriſdiction. The ties which linked together theſe ſmaller confederacies became cloſe and firm; the bonds of public union relaxed, or were diſſolved. The nobles ſtrained their invention in deviſing regulations which tended to aſcertain and perpetuate this diſtinction. In order to guard againſt any appearance of ſubordination in their courts to thoſe of the crown, they frequently conſtrained their monarchs to prohibit the royal judges from entering their territories, or from claiming any juriſdiction there; and if, either through miſtake, or from the ſpirit of encroachment, any royal judge ventured to extend his authority to the vaſſals of a baron, they might plead their right of exemption, and the lord of whom they held could not only reſcue them out of his hands, but was entitled to legal reparation for the injury and affront offered to him. The juriſdiction of the royal judges ſcarcely reached beyond the narrow limits of the king's demeſnes. Inſtead of a regular gradation of courts, all acknowledging the authority of the ſame general laws, and looking up to theſe as the guides of their deciſions, there were in every feudal kingdom a number of independent tribunals, the proceedings of which were directed by local cuſtoms and contradictory forms. The colliſon of juriſdiction among theſe different courts often retarded the execution of juſtice. The variety and caprice of their modes of procedure muſt have for ever kept the adminiſtration of it from attaining any degree of uniformity or perfection.

All the monarchs of Europe perceived theſe encroachments

on their juriſdiction, and bore them with impatience. But the uſurpations of the nobles were ſo firmly eſtabliſhed, and the danger of endeavouring to overturn them by open force was ſo manifeſt, that kings were obliged to remain ſatisfied with attempts to undermine them. Various expedients were employed for this purpoſe; each of which merits attention, as they mark the progreſs of law and equity in the ſeveral kingdoms of Europe. At firſt, princes endeavoured to circumſcribe the juriſdiction of the barons, by contending that they ought to take cognizance only of ſmaller offences, reſerving thoſe of greater moment, under the appellation of *Pleas of the Crown*, and *Royal Cauſes*, to be tried in the king's courts. This, however, affected only the barons of inferior note; the more powerful nobles ſcorned ſuch a diſtinction, and not only claimed unlimited juriſdiction, but obliged their ſovereigns to grant them charters, conveying or recognizing this privilege in the moſt ample form. The attempt, nevertheleſs, was productive of ſome good conſequences, and paved the way for more. It turned the attention of men towards a juriſdiction diſtinct from that of the baron whoſe vaſſals they were; it accuſtomed them to the pretenſions of ſuperiority which the crown claimed over territorial judges; and taught them, when oppreſſed by their own ſuperior lord, to look up to their ſovereign as their protector. This facilitated the introduction of appeals, by which princes brought the deciſions of the barons' courts under the review of the royal judges. While trial by combat ſubſiſted in full vigour, no point decided according to that mode could be brought under the review of another court. It had been referred to the judgment of God; the iſſue of battle had declared his will; and it would have been impious to have called in queſtion the equity of the divine deciſion. But as ſoon as the barbarous cuſtom began to fall into diſuſe, princes encouraged the vaſſals of the barons to ſue for redreſs, by appealing to the royal courts. The progreſs of this practice, however, was ſlow and gradual. The firſt inſtances of appeals were on ac-

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count of *the delay* or *refuſal of juſtice* in the barons' court; and as theſe were countenanced by the ideas of ſubordination in the feudal conſtitution, the nobles allowed them to be introduced without much oppoſition. But when theſe were followed by appeals on account of *the injuſtice* or *iniquity of the ſentence*, the nobles then began to be ſenſible, that if this innovation became general, the ſhadow of power alone would remain in their hands, and all real authority and juriſdiction would center in thoſe courts which poſſeſſed the right of review. They inſtantly took the alarm, remonſtrated againſt the encroachment, and contended boldly for their ancient privileges. But the monarchs in the different kingdoms of Europe purſued their plan with ſteadineſs and prudence. Though forced to ſuſpend their operations on ſome occaſions, and ſeemingly to yield when any formidable confederacy of their vaſſals united againſt them, they reſumed their meaſures as ſoon as they obſerved the nobles to be remiſs or feeble, and puſhed them with vigour. They appointed the royal courts, which originally were ambulatory, and irregular with reſpect to their times of meeting, to be held in a fixed place, and at ſtated ſeaſons. They were ſolicitous to name judges of more diſtinguiſhed abilities than ſuch as uſually preſided in the courts of the barons. They added dignity to their character, and ſplendour to their aſſemblies. They laboured to render their forms regular, and their decrees conſiſtent. Such judicatories became, of courſe, the objects of public confidence as well as veneration. The people, relinquiſhing the partial tribunals of their lords, were eager to bring every ſubject of conteſt under the more equal and diſcerning eye of thoſe whom their ſovereign had choſen to give judgment in his name. Thus kings became once more the heads of the community, and the diſpenſers of juſtice to their ſubjects. The barons, in ſome kingdoms ceaſed to exerciſe their right of juriſdiction, becauſe it ſunk into contempt; in others, it was circumſcribed by ſuch regulations as rendered it innocent, or it was entirely aboliſhed

by expreſs ſtatutes. Thus the adminiſtration of juſtice taking its riſe from one ſource, and following one direction, held its courſe in every ſtate with more uniformity, and with greater force [Z].

VI. The forms and maxims of the canon law, which were become univerſally reſpectable from their authority in the ſpiritual courts, contributed not a little towards thoſe improvements in juriſprudence which I have enumerated. If we conſider the canon law politically, and view it either as a ſyſtem framed on purpoſe to aſſiſt the clergy in uſurping powers and juriſdiction no leſs repugnant to the nature of their function, than inconſiſtent with the order of government; or as the chief inſtrument in eſtabliſhing the dominion of the popes, which ſhook the throne, and endangered the liberties of every kingdom in Europe, we muſt pronounce it one of the moſt formidable engines ever formed againſt the happineſs of civil ſociety. But if we contemplate it merely as a code of laws reſpecting the rights and property of individuals, and attend only to the civil effects of its deciſions concerning theſe, it will appear in a different, and a much more favourable light. In ages of ignorance and credulity, the miniſters of religion are the objects of ſuperſtitious veneration. When the barbarians who over-ran the Roman Empire firſt embraced the Chriſtian faith, they found the clergy in poſſeſſion of conſiderable power; and they naturally transferred to thoſe new guides the profound ſubmiſſion and reverence which they were accuſtomed to yield to the prieſts of that religion which they had forſaken. They deemed their perſons to be equally ſacred with their function; and would have conſidered it as impious to ſubject them to the profane juriſdiction of the laity. The clergy were not blind to theſe advantages which the weakneſs of mankind afforded them. They eſtabliſhed courts in which every queſtion relating to their own character, their function, or their property, was tried. They pleaded

[Z] Note XXIII.

and obtained an almoſt total exemption from the authority of civil judges. Upon different pretexts, and by a multiplicity of artifices, they communicated this privilege to ſo many perſons, and extended their juriſdiction to ſuch a variety of caſes, that the greater part of thoſe affairs which give riſe to conteſt and litigation, was drawn under the cognizance of the ſpiritual courts.

But in order to diſpoſe the laity to ſuffer theſe uſurpations without murmur or oppoſition, it was neceſſary to convince them, that the adminiſtration of juſtice would be rendered more perfect by the eſtabliſhment of this new juriſdiction. This was not a difficult undertaking at that period, when eccleſiaſtics carried on their encroachments with the greateſt ſucceſs. That ſcanty portion of ſcience which ſerved to guide men in the ages of darkneſs, was almoſt entirely engroſſed by the clergy. They alone were accuſtomed to read, to inquire, and to reaſon. Whatever knowledge of ancient juriſprudence had been preſerved, either by tradition, or in ſuch books as had eſcaped the deſtructive rage of barbarians, was poſſeſſed by them. Upon the maxims of that excellent ſyſtem, they founded a code of laws conſonant to the great principles of equity. Being directed by fixed and known rules, the forms of their courts were aſcertained, and their deciſions became uniform and conſiſtent. Nor did they want authority ſufficient to enforce their ſentences. Excommunication and other eccleſiaſtical cenſures, were puniſhments more formidable than any that civil judges could inflict in ſupport of their decrees.

It is not ſurpriſing, then, that eccleſiaſtical juriſprudence ſhould become ſuch an object of admiration and reſpect, that exemption from civil juriſdiction was courted as a privilege, and conferred as a reward. It is not ſurpriſing, that, even to rude people, the maxims of the canon law, ſhould appear more equal and juſt than thoſe of the ill-digeſted juriſprudence which directed all proceedings in civil courts. According to the latter, the differences between

contending barons were terminated, as in a ſtate of nature, by the ſword; according to the former, every matter was ſubjected to the deciſion of laws. The one, by permitting judicial combats, left chance and force to be arbiters of right or wrong, of truth or falſehood; the other paſſed judgment with reſpect to theſe, by the maxims of equity, and the teſtimomy of witneſſes. Any error or iniquity in a ſentence pronounced by a baron to whom feudal juriſdiction belonged, was irremediable, becauſe, originally it was ſubject to the review of no ſuperior tribunal; the eccleſiaſtical law eſtabliſhed a regular gradation of courts, through all which a cauſe might be carried by appeal, until it was determined by that authority which was held to be ſupreme in the church. Thus the genius and principles of the canon law prepared men for approving thoſe three great alterations in the feudal juriſprudence which I have mentioned. But it was not with reſpect to theſe points alone that the canon law ſuggeſted improvements beneficial to ſociety. Many of the regulations, now deemed the barriers of perſonal ſecurity, or the ſafeguards of private property, are contrary to the ſpirit and repugnant to the maxims of the civil juriſprudence known in Europe during ſeveral centuries, and were borrowed from the rules and practice of the eccleſiaſtical courts. By obſerving the wiſdom and equity of the deciſions in theſe courts, men began to perceive the neceſſity either of deſerting the martial tribunals of the barons, or of attempting to reform them [AA.]

VII. The revival of the knowlege and ſtudy of the Roman law co-operated with the cauſes which I have mentioned, in introducing more juſt and liberal ideas concerning the nature of government, and the adminiſtration of juſtice. Among the calamities which the devaſtations of the barbarians, who broke in upon the empire, brought upon mankind, one of the greateſt was their overturning the ſyſtem of Roman juriſprudence, the nobleſt monument of the wiſdom

[AA] Note XXIV.

of that great people, formed to ſubdue and to govern the world. The laws and regulations of a civilized community were altogether repugnant to the manners and ideas of theſe fierce invaders. They had reſpect to objects of which a rude people had no conception; and were adapted to a ſtate of ſociety with which they were entirely unacquainted. For this reaſon, wherever they ſettled, the Roman juriſprudence ſoon ſunk into oblivion, and lay buried for ſome centuries under the load of thoſe inſtitutions which the inhabitants of Europe dignified with the name of laws. But towards the middle of the twelfth century, a copy of Juſtinian's Pandects was accidentally diſcovered in Italy. By that time, the ſtate of ſociety was ſo far advanced, and the ideas of men ſo much enlarged and improved by the occurrences of ſeveral centuries, during which they had continued in political union, that they were ſtruck with admiration of a ſyſtem which their anceſtors could not comprehend. Tho' they had not hitherto attained ſuch a degree of refinement, as to acquire from the ancients a reliſh for true philoſophy or ſpeculative ſcience; though they were ſtill inſenſible, in a great degree, to the beauty and elegance of claſſical compoſition; they were ſufficiently qualified to judge with reſpect to the merit of their ſyſtem of laws, in which the many points moſt intereſting to mankind were ſettled with diſcernment, preciſion, and equity. All men of letters ſtudied this new ſcience with eagerneſs; and within a few years after the diſcovery of the Pandects, profeſſors of civil law were appointed, who taught it publicly in moſt countries of Europe.

The effects of having ſuch an excellent model to ſtudy and to imitate were immediately perceived. Men, as ſoon as they were acquainted with fixed and general laws, perceived the advantage of them, and became impatient to aſcertain the principles and forms by which judges ſhould regulate their deciſions. Such was the ardour with which they carried on an undertaking of ſo great importance to

ſociety, that, before the cloſe of the twelfth century, the feudal law was reduced into a regular ſyſtem; the code of canon law was enlarged and methodized; and the looſe uncertain cuſtoms of different provinces or kingdoms were collected and arranged with an order and accuracy acquired from the knowledge of Roman juriſprudence. In ſome countries of Europe the Roman law was adopted as ſubſidiary to their own municipal law; and all caſes to which the latter did not extend, were decided according to the principles of the former. In others, the maxims as well as forms of Roman juriſprudence mingled imperceptibly with the laws of the country, and had a powerful, though leſs ſenſible, influence, in improving and perfecting them [BB.]

Theſe various improvements in the ſyſtem of juriſprudence, and adminiſtration of juſtice, occaſioned a change in manners, of great importance, and of extenſive effect. They gave riſe to a diſtinction of profeſſions; they obliged men to cultivate different talents, and to aim at different accompliſhments, in order to qualify themſelves for the various departments and functions which became neceſſary in ſociety*. Among uncivilized nations, there is but one profeſſion honourable, that of arms. All the ingenuity and vigour of the human mind are exerted in acquiring military ſkill or addreſs. The functions of peace are few and ſimple; and require no particular courſe of education or of ſtudy, as a preparation for diſcharging them. This was the ſtate of Europe during ſeveral centuries. Every gentleman, born a ſoldier, ſcorned any other occupation; he was taught no ſcience but that of war; even his exerciſes and paſtimes were feats of martial proweſs. Nor did the judicial character, which perſons of noble birth were alone entitled to aſſume, demand any degree of knowledge beyond that which ſuch untutored ſoldiers poſſeſſed. To recollect a

[BB] Note XXV.

* Dr. Ferguſon's Eſſay on the Hiſtory of Civil Society, part iv. ſect. 1.

few traditionary cuſtoms which time had confirmed, and rendered reſpectable; to mark out the liſts of battle with due formality; to obſerve the iſſue of the combat; and to pronounce whether it had been conducted according to the laws of arms; included every thing that a baron, who acted as a judge, found it neceſſary to underſtand.

But when the forms of legal proceedings were fixed, when the rules of deciſion were committed to writing, and collected into a body, law became a ſcience, the knowledge of which required a regular courſe of ſtudy, together with long attention to the practice of courts. Martial and illiterate nobles had neither leiſure nor inclination to undertake a taſk ſo laborious, as well as ſo foreign from all the occupations which they deemed entertaining, or ſuitable to their rank. They gradually relinquiſhed their places in courts of juſtice, where their ignorance expoſed them to contempt. They became weary of attending to the diſcuſſion of caſes, which grew too intricate for them to comprehend. Not only the judicial determination of points which were the ſubject of controverſy, but the conduct of all legal buſineſs and tranſactions, was committed to perſons trained by previous ſtudy and application to the knowledge of law. An order of men, to whom their fellow citizens had daily recourſe for advice, and to whom they looked up for deciſion in their moſt important concerns, naturally acquired conſideration and influence in ſociety. They were advanced to honours which had been conſidered hitherto as the peculiar rewards of military virtue. They were entruſted with offices of the higheſt dignity and moſt extenſive power. Thus, another profeſſion than that of arms came to be introduced among the laity, and was reputed honourable. The functions of civil life were attended to. The talents requiſite for diſcharging them were cultivated. A new road was opened to wealth and eminence. The arts and virtues of peace were placed in their proper rank, and received their due recompence [CC.]

[CC] Note XXVI.

VIII. While improvements, ſo important with reſpect to the ſtate of ſociety and the adminiſtration of juſtice, gradually made progreſs in Europe, ſentiments more liberal and generous had begun to animate the nobles. Theſe were inſpired by the ſpirit of chivalry, which, though conſidered, commonly, as a wild inſtitution, the effect of caprice, and the ſource of extravagance, aroſe naturally from the ſtate of ſociety at that period, and had a very ſerious influence in refining the manners of the European nations. The feudal ſtate was a ſtate of almoſt perpetual war, rapine, and anarchy; during which the weak and unarmed were expoſed to inſults or injuries. The power of the ſovereign was too limited to prevent theſe wrongs; and the adminiſtration of juſtice too feeble to redreſs them. The moſt effectual protection againſt violence and oppreſſion was often found to be that which the valour and generoſity of private perſons afforded. The ſame ſpirit of enterpriſe which had prompted ſo many gentlemen to take arms in defence of the oppreſſed pilgrims in Paleſtine, incited others to declare themſelves the patrons and avengers of injured innocence at home. When the final reduction of the Holy Land under the dominion of infidels put an end to theſe foreign expeditions, the latter was the only employment left for the activity and courage of adventurers. To check the inſolence of over-grown oppreſſors; to reſcue the helpleſs from captivity; to protect, or to avenge women, orphans, and eccleſiaſtics, who could not bear arms in their own defence; to redreſs wrongs and remove grievances; were deemed acts of the higheſt proweſs and merit. Valour, humanity, courteſy, juſtice, honour, were the characteriſtic qualities of chivalry. To theſe were added religion, which mingled itſelf with every paſſion and inſtitution during the middle ages, and by infuſing a large proportion of enthuſiaſtic zeal, gave them ſuch force, as carried them to romantic exceſs. Men were trained to knighthood by a long previous diſcipline; they were admitted into the order by ſolemnities no leſs devout than pompous; eve-

ry perſon of noble birth courted that honour; it was deemed a diſtinction ſuperior to royalty; and monarchs were proud to receive it from the hands of private gentlemen.

This ſingular inſtitution, in which valour, gallantry, and religion, were ſo ſtrangely blended, was wonderfully adapted to the taſte and genius of martial nobles; and its effects were ſoon viſible in their manners. War was carried on with leſs ferocity, when humanity came to be deemed the ornament of knighthood no leſs than courage. More gentle and poliſhed manners were introduced, when courteſy was recommended as the moſt amiable of knightly virtues. Violence and oppreſſion decreaſed, when it was reckoned meritorious to check and to puniſh them. A ſcrupulous adherence to truth, with the moſt religious attention to fulfil every engagement, became the diſtinguiſhing characteriſtic of a gentleman, becauſe chivalry was regarded as the ſchool of honour, and inculcated the moſt delicate ſenſibility with reſpect to thoſe points. The admiration of theſe qualities, together with the high diſtinctions and prerogatives conferred on knighthood in every part of Europe, inſpired perſons of noble birth on ſome occaſions with a ſpecies of military fanaticiſm, and led them to extravagant enterpriſes. But they deeply imprinted on their minds the principles of generoſity and honour. Theſe were ſtrengthened by every thing that can affect the ſenſes or touch the heart. The wild exploits of thoſe romantic knights who ſallied forth in queſt of adventures, are well known, and have been treated with proper ridicule. The political and permanent effects of the ſpirit of chivalry have been leſs obſerved. Perhaps, the humanity which accompanies all the operations of war, the refinements of gallantry, and the point of honour, the three chief circumſtances which diſtinguiſh modern from ancient manners, may be aſcribed in a great meaſure to this inſtitution, which has appeared whimſical to ſuperficial obſervers, but by its effects has proved of great benefit to mankind. The ſentiments which chivalry inſpired had a won-

derful influence on manners and conduct during the twelfth, thirteenth, fourteenth, and fifteenth centuries. They were so deeply rooted, that they continued to operate after the vigour and reputation of the institution itself began to decline. Some considerable transactions, recorded in the following history, resemble the adventurous exploits of chivalry, rather than the well-regulated operations of sound policy. Some of the most eminent personages, whose characters will be delineated, were strongly tinctured with this romantic spirit. Francis I. was ambitious to distinguish himself by all the qualities of an accomplished knight, and endeavoured to imitate the enterprising genius of chivalry in war, as well as its pomp and courtesy during peace. The fame which the French monarch acquired by these splendid actions, so far dazzled his more temperate rival, that he departed on some occasions from his usual prudence and moderation, and emulated Francis in deeds of prowess or of gallantry [DD.]

IX. The progress of science, and the cultivation of literature, had a considerable effect in changing the manners of the European nations, and introducing that civility and refinement by which they are now distinguished. At the time when their Empire was overturned, the Romans, though they had lost that correct taste which has rendered the productions of their ancestors standards of excellence, and models of imitation for succeeding ages, still preserved their love of letters, and cultivated the arts with great ardour. But rude barbarians were so far from being struck with any admiration of these unknown accomplishments, that they despised them. They were not arrived at that state of society, when those faculties of the human mind, which have beauty and elegance for their objects, begin to unfold themselves. They were strangers to most of those wants and desires which are the parents of ingenious invention; and they did not comprehend either the merit or utility

[DD] Note XXVII.

Roman arts, they deſtroyed the monuments of them, with an induſtry not inferior to that with which their poſterity have ſince ſtudied to preſerve or to recover them. The convulſions occaſioned by the ſettlement of ſo many unpoliſhed tribes in the Empire; the frequent as well as violent revolutions in every kingdom which they eſtabliſhed; together with the interior defects in the form of government which they introduced, baniſhed ſecurity and leiſure; prevented the growth of taſte, or the culture of ſcience; and kept Europe, during ſeveral centuries, in that ſtate of ignorance which has been already deſcribed. But the events and inſtitutions which I have enumerated, produced great alterations in ſociety. As ſoon as their operation, in reſtoring liberty and independence to one part of the community, began to be felt; as ſoon as they began to communicate to all the members of ſociety, ſome taſte of the advantages ariſing from commerce, from public order, and from perſonal ſecurity, the human mind became conſcious of powers which it did not formerly perceive, and fond of occupations or purſuits of which it was formerly incapable. Towards the beginning of the twelfth century, we diſcern the firſt ſymptoms of its awakening from that lethargy in which it had been long ſunk, and obſerve it turning with curioſity and attention towards new objects.

The firſt literary efforts, however, of the European nations in the middle ages, were extremely ill directed. Among nations, as well as individuals, the powers of imagination attain ſome degree of vigour before the intellectual faculties are much exerciſed in ſpeculative or abſtract diſquiſition. Men are poets before they are philoſophers. They feel with ſenſibility, and deſcribe with force, when they have made but little progreſs in inveſtigation or reaſoning. The age of Homer and of Heſiod long preceded that of Thales of Socrates. But, unhappily for literature, our anceſtors, ing from this courſe which nature points out, plunged into the depths of abſtruſe and metaphyſical inquiry.

They had been converted to the Chriſtian faith, ſoon after they ſettled in their new conqueſts. But they did not receive it pure. The preſumption of men had added to the ſimple and inſtructive doctrines of Chriſtianity the theories of a vain philoſophy, that attempted to penetrate into myſteries, and to decide queſtions which the limited faculties of the human mind are unable to comprehend or to reſolve. Theſe over-curious ſpeculations were incorporated with the ſyſtem of religion, and came to be conſidered as the moſt eſſential part of it. As ſoon, then, as curioſity prompted men to inquire and to reaſon, theſe were the ſubjects which firſt preſented themſelves, and engaged their attention. The ſcholaſtic theology, with its infinite train of bold diſquiſitions and ſubtile diſtinctions concerning points which are not the object of human reaſon, was the firſt production of the ſpirit of inquiry after it began to reſume ſome degree of activity and vigour in Europe. It was not, however, this circumſtance alone that gave ſuch a wrong turn to the minds of men, when they began again to exerciſe talents which they had ſo long neglected. Moſt of the perſons who attempted to revive literature in the twelfth and thirteenth centuries, had received inſtruction, or derived their principles of ſcience, from the Greeks in the eaſtern Empire, or from the Arabians in Spain and Africa. Both theſe people, acute and inquiſitive to exceſs, had corrupted thoſe ſciences which they cultivated. The former rendered theology a ſyſtem of ſpeculative refinement, or of endleſs controverſy. The latter communicated to philoſophy a ſpirit of metaphyſical and frivolous ſubtlety. Miſled by theſe guides, the perſons who firſt applied to ſcience were involved in a maze of intricate inquiries. Inſtead of allowing their fancy to take its natural range, and to produce ſuch works of invention as might have improved their taſte, and refined their ſentiments; inſtead of cultivating thoſe arts which embelliſh human life, and render it comfortable; they were fettered by authority, they were led aſtray by example,

and waſted the whole force of their genius in ſpeculations as unavailing as they were difficult.

But fruitleſs and ill-directed as theſe ſpeculations were, their novelty rouſed, and their boldneſs intereſted the human mind. The ardour with which men purſued thoſe uninviting ſtudies, was aſtoniſhing. Genuine philoſophy was never cultivated, in any enlightened age, with more zeal. Schools, upon the model of thoſe inſtituted by Charlemagne, were opened in every cathedral, and almoſt in every monaſtery of note. Colleges and univerſities were erected and formed into communities or corporations, governed by their own laws, and inveſted with ſeparate and extenſive juriſdiction over their own members. A regular courſe of ſtudies was planned. Privileges of great value were conferred on maſters and ſcholars. Academical titles and honours of various kinds were invented as a recompence for both. Nor was it in the ſchools alone that ſuperiority in ſcience led to reputation and authority; it became an object of reſpect in life, and advanced ſuch as required it to a rank of no inconſiderable eminence. Allured by all theſe advantages, an incredible number of ſtudents reſorted to thoſe new ſeats of learning, and crowded with eagerneſs into that new path which was opened to fame and diſtinction.

But how conſiderable ſoever theſe firſt efforts may appear, there was one circumſtance which prevented the effects of them from being as extenſive as they naturally ought to have been. All the languages in Europe, during the period under review, were barbarous. They were deſtitute of elegance, of force, and even of perſpicuity. No attempt had been hitherto made to improve or to poliſh them. The Latin tongue was conſecrated by the church to religion. Cuſtom, with authority ſcarcely leſs ſacred, had appropriated it to literature. All the ſciences cultivated in the twelfth and thirteenth centuries were taught in Latin. All books with reſpect to them were written in that language. It would have been deemed a degradation of any important ſubject,

to have treated of it in a modern language. This confined ſcience within a very narrow circle. The learned alone were admitted into the temple of knowledge; the gate was ſhut againſt all others, who were ſuffered to remain involved in their former darkneſs and ignorance.

But though ſcience was thus prevented, during ſeveral ages, from diffuſing itſelf through ſociety, and its influence was much circumſcribed; the progreſs which it made may be mentioned, nevertheleſs, among the great cauſes which contributed to introduce a change of manners into Europe. The ardent, though ill-judged ſpirit of inquiry which I have deſcribed, occaſioned a fermentation of mind that put ingenuity and invention in motion, and gave them vigour. It led men to a new employment of their faculties, which they found to be agreeable as well as intereſting. It accuſtomed them to exerciſes and occupations which tended to ſoften their manners, and to give them ſome reliſh for the gentle virtues, peculiar to people among whom ſcience has been cultivated with ſucceſs [EE].

X. The progreſs of commerce had conſiderable influence in poliſhing the manners of the European nations, and in eſtabliſhing among them order, equal laws, and humanity. The wants of men, in the original and moſt ſimple ſtate of ſociety, are ſo few, and their deſires ſo limited, that they reſt contented with the natural productions of their climate and ſoil, or with what they can add to theſe by their own rude induſtry. They have no ſuperfluities to diſpoſe of, and few neceſſities that demand a ſupply. Every little community ſubſiſting on its own domeſtic flock, and ſatisfied with it, is either little acquainted with the ſtates around it, or at variance with them. Society and manners muſt be conſiderably improved, and many proviſions muſt be made for public order and perſonal ſecurity, before a liberal intercourſe can take place between different nations. We find, accordingly, that the firſt effect of the ſettlement of the bar-

[EE] Note XXVIII.

barians in the Empire, was to divide thoſe nations which the Roman power had united. Europe was broken into many ſeparate communities. The intercourſe between theſe divided ſtates, ceaſed almoſt entirely during ſeveral centuries. Navigation was dangerous in ſeas infeſted by pirates; nor could ſtrangers truſt to a friendly reception in the ports of uncivilized nations. Even between diſtant parts of the ſame kingdom, the communication was rare and difficult. The lawleſs rapine of banditti, together with the avowed exactions of the nobles, ſcarcely leſs formidable than oppreſſive, rendered a journey of any length a perilous enterprize. Fixed to the ſpot in which they reſided, the greater part of the inhabitants of Europe loſt, in a great meaſure, the knowledge of remote regions, and were unacquainted with their names, their ſituations, their climates, and their commodities [FF].

Various cauſes, however, contributed to revive the ſpirit of commerce, and to renew, in ſome degree, the intercourſe between different nations. The Italians, by their connection with Conſtantinople, and other cities of the Greek empire, had preſerved in their own country conſiderable reliſh for the precious commodities and curious manufactures of the Eaſt. They communicated ſome knowledge of theſe to the countries contiguous to Italy. But this commerce being extremely limited, the intercourſe which it occaſioned between different nations was not conſiderable. The Cruſades, by leading multitudes from every corner of Europe into Aſia, opened a more extenſive communication between the Eaſt and Weſt, which ſubſiſted for two centuries; and though the object of theſe expeditions was conqueſt and not commerce; though the iſſue of them proved as unfortunate, as the motives for undertaking them were wild and enthuſiaſtic; their commercial effects, as hath been ſhewn, were both beneficial and permanent. During the continuance of the Cruſades, the great cities in Italy, and in other countries

[FF] Note XXIX.

of Europe, acquired liberty, and together with it ſuch privileges as rendered them reſpectable and independent communities. Thus, in every ſtate, there was formed a new order of citizens, to whom commerce preſented itſelf as their proper object, and opened to them a certain path to wealth and conſideration. Soon after the cloſe of the Holy War, the mariner's compaſs was invented, which, by rendering navigation more ſecure, encouraged it to become more adventurous, facilitated the communication between remote nations, and brought them nearer to each other.

The Italian States, during the ſame period, eſtabliſhed a regular commerce with the Eaſt in the ports of Egypt, and drew from thence all the rich products of the Indies. They introduced into their own territories manufactures of various kinds, and carried them on with great ingenuity and vigour. They attempted new arts; and tranſplanted from warmer climates, to which they had been hitherto deemed peculiar, ſeveral natural productions which now furniſh the materials of a lucrative and extended commerce. All theſe commodities, whether imported from Aſia, or produced by their own ſkill, they diſpoſed of to great advantage among the other people of Europe, who began to acquire ſome taſte for an elegance in living unknown to their anceſtors, or deſpiſed by them. During the twelfth and thirteenth centuries the commerce of Europe was almoſt entirely in the hands of the Italians, more commonly known in thoſe ages by the name of Lombards. Companies or ſocieties of Lombard merchants ſettled in every different kingdom. They were taken under the immediate protection of the ſeveral governments. They enjoyed extenſive privileges and immunities. The operation of the ancient barbarous laws concerning ſtrangers, was ſuſpended with reſpect to them. They became the carriers, the manufacturers, and the bankers of all Europe.

While the Italians, in the South of Europe, were cultivating trade with ſuch induſtry and ſucceſs, the commercial ſpi-

rit awakened in the North towards the middle of the thirteenth century. As the nations around the Baltic were, at that time, extremely barbarous, and infeſted that ſea with their piracies, the cities of Lubec and Hamburgh, ſoon after they began to open ſome trade with theſe people, found it neceſſary to enter into a league of mutual defence. They derived ſuch advantages from this union, that other towns acceded to their confederacy, and in a ſhort time, eighty of the moſt conſiderable cities ſcattered through thoſe extenſive countries which ſtretch from the bottom of the Baltic to Cologne on the Rhine, joined in the famous Hanſeatic league, which became ſo formidable, that its alliance was courted, and its enmity was dreaded by the greateſt monarchs. The members of this powerful aſſociation formed the firſt ſyſtematic plan of commerce known in the middle ages, and conducted it by common laws enacted in their general aſſemblies. They ſupplied the reſt of Europe with naval ſtores, and pitched on different towns, the moſt eminent of which was Bruges in Flanders, where they eſtabliſhed ſtaples in which their commerce was regularly carried on. Thither the Lombards brought the productions of India, together with the manufactures of Italy, and exchanged them for the more bulky, but not leſs uſeful commodities of the North. The Hanſeatic merchants diſpoſed of the cargoes which they received from the Lombards, in the ports of the Baltic, or carried them up the great rivers into the interior parts of Germany.

This regular intercourſe opened between the nations in the north and ſouth of Europe, made them ſenſible of their mutual wants, and created ſuch new and increaſing demands for commodities of every kind, that it excited among the inhabitants of the Netherlands a more vigorous ſpirit in carrying on the two great manufactures of wool and flax, which ſeem to have been conſiderable in that country as early as the age of Charlemagne. As Bruges became the centre of communication between the Lombard and Hanſeatic mer-

chants, the Flemings traded with both in that city to ſuch extent as well as advantage, as ſpread among them a general habit of induſtry, which long rendered Flanders and the adjacent provinces the moſt opulent, the moſt populous, and beſt cultivated countries in Europe.

Struck with the flouriſhing ſtate of theſe provinces, of which he diſcerned the true cauſe, Edward III. of England endeavoured to excite a ſpirit of induſtry among his own ſubjects, who, blind to the advantages of their ſituation, and ignorant of the ſource from which opulence was deſtined to flow into their country, were ſo little attentive to their commercial intereſts, as hardly to attempt thoſe manufactures, the materials of which they furniſhed to foreigners. By alluring Flemiſh artiſans to ſettle in his dominions, as well as by many wiſe laws for the encouragement and regulation of trade, Edward gave a beginning to the woollen manufactures of England, and firſt turned the active and enterpriſing genius of his people towards thoſe arts which have raiſed the Engliſh to the higheſt rank among commercial nations.

This increaſe of commerce, and of intercourſe between nations, how inconſiderable ſoever it may appear in reſpect of their rapid and extenſive progreſs during the laſt and preſent age, ſeems wonderfully great, when we compare it with the ſtate of both in Europe previous to the twelfth century. It did not fail of producing great effects. Commerce tends to wear off thoſe prejudices which maintain diſtinction and animoſity between nations. It ſoftens and poliſhes the manners of men. It unites them by one of the ſtrongeſt of all ties, the deſire of ſupplying their mutual wants. It diſpoſes them to peace, by eſtabliſhing in every ſtate an order of citizens bound by their intereſt to be the guardians of public tranquillity. As ſoon as the commercial ſpirit acquires vigour, and begins to gain an aſcendant in any ſociety, we diſcover a new genius in its policy, its alliances, its wars, and its negotiations. Conſpicuous proofs of this occur in the hiſtory of the Italian ſtates, of the Hanſeatic league,

and the cities of the Netherlands during the period under review. In proportion as commerce made its way into the different countries of Europe, they ſucceſſively turned their attention to thoſe objects, and adopted thoſe manners, which occupy and diſtinguiſh poliſhed nations [GG].

## SECT. II.

*View of the Progreſs of Society in Europe, with reſpect to the Command of the National Force requiſite in Foreign Operations.*

Such are the events and inſtitutions which, by their powerful operation, contributed gradually to introduce regular government and poliſhed manners into the various nations of Europe. When we ſurvey the ſtate of ſociety, or the character of individuals, at the opening of the fifteenth century, and then turn back to view the condition of both at the time when the barbarous tribes, which overturned the Roman power, completed their ſettlement in their new conqueſts, the progreſs which mankind had made towards order and refinement will appear immenſe.

Government, however, was ſtill far from having attained that ſtate, in which extenſive monarchies act with the united vigour of the whole community, or carry on great undertakings with perſeverance and ſucceſs. Small tribes or communities, even in their rudeſt ſtate, may operate in concert, and exert their utmoſt force. They are excited to act not by the diſtant objects or the refined ſpeculations which intereſt or affect men in poliſhed ſocieties, but by their preſent feelings. The inſults of an enemy kindle reſentment;

[GG] Note XXX.

the ſucceſs of a rival tribe awakens emulation; theſe paſſions communicate from breaſt to breaſt, and all the members of the community, with united ardour, ruſh into the field in order to gratify their revenge, or to acquire diſtinction. But in widely extended ſtates, ſuch as the great kingdoms of Europe at the beginning of the fifteenth century, where there is little intercourſe between the diſtant members of the community, and where every great enterprize requires previous concert and long preparation, nothing can rouſe and call forth their united ſtrength, but the abſolute command of a deſpot, or the powerful influence of regular policy. Of the former, the vaſt empires in the Eaſt are an example; the irreſiſtable mandate of the ſovereign reaches the moſt remote provinces of his dominions, and compels whatever number of his ſubjects he is pleaſed to ſummon, to follow his ſtandard. The kingdoms of Europe, in the preſent age, are an inſtance of the latter; the prince, by the leſs violent, but no leſs effectual operation of laws and a well-regulated government, is enabled to avail himſelf of the whole force of his ſtate, and to employ it in enterprizes which require ſtrenuous and perſevering efforts.

But, at the opening of the fifteenth century, the political conſtitution in all the kingdoms of Europe was very different from either of theſe ſtates of government. The ſeveral monarchs, though they had ſomewhat enlarged the boundaries of prerogative by ſucceſsful encroachments on the immunities and privileges of the nobility, were poſſeſſed of an authority extremely limited. The laws and interior police of kingdoms, though much improved by the various events and regulations which I have enumerated, were ſtill feeble and imperfect. In every country, a numerous body of nobles, who continued to be formidable notwithſtanding the various expedients employed to depreſs them, watched all the motions of their ſovereign with a jealous attention, which ſet bounds to his ambition, and either prevented his forming

ſchemes of extenſive enterprize, or obſtructed the execution of them.

The ordinary revenues of every prince were ſo extremely ſmall as to be inadequate to any great undertaking. He depended for extraordinary ſupplies on the good-will of his ſubjects, who granted them often with a reluctant, and always with a ſparing hand.

As the revenues of princes were inconſiderable, the armies which they could bring into the field were unfit for long and effectual ſervice. Inſtead of being able to employ troops trained to ſkill in arms, and to military ſubordination, by regular diſcipline, monarchs were obliged to depend on ſuch forces as their vaſſals conducted to their ſtandard in conſequence of their military tenures. Theſe, as they were bound to remain under arms only for a ſhort time, could not march far from their uſual place of reſidence, and being more attached to the lord of whom they held, than to the ſovereign whom they ſerved, were often as much diſpoſed to counteract as to forward his ſchemes. Nor were they, even if they had been more ſubject to the command of the monarch, proper inſtruments to carry into execution any great and arduous enterprize. The ſtrength of an army, formed either for conqueſt or defence, lies in infantry. To the ſtability and diſcipline of their legions, conſiſting chiefly of infantry, the Romans, during the times of the republic, were indebted for their victories; and when their deſcendants, forgetting the inſtitutions which had led them to univerſal dominion, ſo far altered their military ſyſtem as to place their principal confidence in a numerous cavalry, the undiſciplined impetuoſity of the barbarous nations, who fought moſtly on foot, was ſufficient, as I have already obſerved, to overcome them. Theſe nations, ſoon after they ſettled in their new conqueſts, uninſtructed by the fatal error of the Romans, relinquiſhed the cuſtoms of their anceſtors, and converted the chief force of their armies into cavalry. Among the Romans this change was occaſioned by the effemi-

nacy of their troops, who could not endure the fatigues of ſervice, which their more virtuous and hardy anceſtors had ſuſtained with eaſe. Among the people who eſtabliſhed the new monarchies into which Europe was divided, this innovation in military diſcipline ſeems to have flowed from the pride of the nobles, who, ſcorning to mingle with perſons of inferior rank, aimed at being diſtinguiſhed from them in the field, as well as during peace. The inſtitution of chivalry, and the frequency of tournaments, in which knights, in complete armour, entered the liſts on horſeback with extraordinary ſplendour, diſplaying amazing addreſs, force, and valour, brought cavalry into ſtill greater eſteem. The fondneſs for that ſervice increaſed to ſuch a degree, that during the thirteenth and fourteenth centuries, the armies of Europe were compoſed almoſt entirely of cavalry. No gentleman would appear in the field but on horſeback. To ſerve in any other manner, he would have deemed derogatory to his rank. The cavalry, by way of diſtinction, was called *The battle*, and on it alone depended the fate of every action. The infantry, collected from the dregs and refuſe of the people, ill armed and worſe diſciplined, was almoſt of no account.

As theſe circumſtances rendered the operations of particular kingdoms leſs conſiderable and leſs vigorous, ſo they long kept the princes of Europe from giving ſuch attention to the ſchemes and tranſactions of their neighbours, as might lead them to form any regular ſyſtem of public ſecurity. They were, of conſequence, prevented from uniting in confederacy, or from acting with concert, in order to eſtabliſh ſuch a diſtribution and balance of power, as ſhould hinder any ſtate from riſing to a ſuperiority, which might endanger the general liberty and independence. During ſeveral centuries, the nations of Europe appear to have conſidered themſelves as ſeparate ſocieties, ſcarcely connected together by any common intereſt, and little concerned in each other's affairs or operations. An extenſive commerce did not afford them an opportunity of obſerving and penetrating into the

ſchemes of every different ſtate. They had not ambaſſadors reſiding conſtantly in every court to watch and give early intelligence of all its motions. The expectation of remote advantages, or the proſpect of diſtant and contingent evils, were not ſufficient to excite nations to take arms. Such only as were within the ſphere of immediate danger, and unavoidably expoſed to injury or inſult, thought themſelves intereſted in any conteſt, or bound to take precautions for their own ſafety.

Whoever records the tranſactions of any of the more conſiderable European ſtates during the two laſt centuries, muſt write the hiſtory of Europe. Its various kingdoms, throughout that period, have been formed into one great ſyſtem, ſo cloſely united, that each holding a determinate ſtation, the operations of one are ſo felt by all, as to influence their counſels and regulate their meaſures. But previous to the fifteenth century, unleſs when vicinity of territory rendered the occaſions of diſcord frequent and unavoidable, or when national emulation fomented or embittered the ſpirit of hoſtility, the affairs of different countries are ſeldom interwoven with each other. In each kingdom of Europe great events and revolutions happened, which the other powers beheld with almoſt the ſame indifference as if they had been unintereſted ſpectators, to whom the effect of theſe tranſactions could never extend.

During the violent ſtruggles between France and England, and notwithſtanding the alarming progreſs which was made towards rendering one prince the maſter of both theſe kingdoms, hardly one meaſure, which can be conſidered as the reſult of a ſagacious and prudent policy, was formed in order to guard againſt an event ſo fatal to Europe. The dukes of Burgundy and Bretagne, whom their ſituation would not permit to remain neutral, engaged, it is true, in the conteſt; but in taking their part, they ſeem rather to have followed the impulſe of their paſſions, than to have been guided by any juſt diſcernment of the danger which

threatened themſelves and the tranquillity of Europe. The other princes, ſeemingly unaffected by the alternate ſucceſſes of the contending parties, left them to decide the quarrel by themſelves, or interpoſed only by feeble and ineffectual negotiations.

Notwithſtanding the perpetual hoſtilities in which the various kingdoms of Spain were engaged during ſeveral centuries, and the ſucceſſive occurrences which viſibly tended to unite that part of the continent into one great monarchy, the princes of Europe hardly took any ſtep from which we may conclude that they gave a proper attention to that important event. They permitted a power to ariſe imperceptibly, and to acquire ſtrength there, which ſoon became formidable to all its neighbours.

Amidſt the violent convulſions with which the ſpirit of domination in the ſee of Rome, and the turbulent ambition of the German nobles, agitated the Empire, neither the authority of the popes, ſeconded by all their artifices and intrigues, nor the ſolicitations of the emperors, could induce any of the powerful monarchs of Europe to engage in their quarrel, or to avail themſelves of many favourable opportunities of interpoſing with effect and advantage.

This amazing inactivity, during tranſactions ſo intereſting, is not to be imputed to any incapacity of diſcerning their political conſequences. The power of judging with ſagacity, and of acting with vigour, is the portion of men in every age. The monarchs who reigned in the different kingdoms of Europe during ſeveral centuries, were not blind to their particular intereſt, negligent of the public ſafety, or ſtrangers to the method of ſecuring both. If they did not adopt that ſalutary ſyſtem, which teaches modern politicians to take the alarm at the proſpect of diſtant dangers, which prompts them to check the firſt encroachments of any formidable power, and which renders each ſtate the guardian, in ſome degree, of the rights and independence of all its neighbours, this was owing entirely to ſuch imper-

fections and diſorders in the civil government of each country, as made it impoſſible for ſovereigns to act ſuitably to thoſe ideas which the poſture of affairs, and their own obſervation, muſt have ſuggeſted.

But during the courſe of the fifteenth century, various events happened, which, by giving princes more entire command of the force in their reſpective dominions, rendered their operations more vigorous and extenſive. In conſequence of this, the affairs of different kingdoms becoming more frequently as well as more intimately connected, they were gradually accuſtomed to act in concert and confederacy, and were inſenſibly prepared for forming a ſyſtem of policy, in order to eſtabliſh or to preſerve ſuch a balance of power as was moſt conſiſtent with the general ſecurity. It was during the reign of Charles the Fifth, that the ideas, on which this ſyſtem is founded, firſt came to be fully underſtood. It was then, that the maxims by which it has been uniformly maintained ſince that æra, were univerſally adopted. On this account, a view of the cauſes and events which contributed to eſtabliſh a plan of policy, more ſalutary and extenſive than any that has taken place in the conduct of human affairs, is not only a neceſſary introduction to the following work, but is a capital object in the hiſtory of Europe.

The firſt event that occaſioned any conſiderable alteration in the arrangement of affairs in Europe, was the annexation of the extenſive territories, which England poſſeſſed on the continent, to the crown of France. While the Engliſh were maſters of ſeveral of the moſt fertile and opulent provinces in France, and a great part of its moſt martial inhabitants was bound to follow their ſtandard, an Engliſh monarch conſidered himſelf rather as the rival, than as the vaſſal of the ſovereign of whom he held. The kings of France circumſcribed and thwarted in their ſchemes and operations by an adverſary no leſs jealous than formidable, durſt not enter upon any enterprize of importance or of

difficulty. The Engliſh were always at hand, ready to oppoſe them. They diſputed even their right to their crown, and being able to penetrate, with eaſe, into the heart of the kingdom, could arm againſt them thoſe very hands which ought to have been employed in their defence. Timid counſels and feeble efforts were natural to monarchs in ſuch a ſituation. France, diſmembered and overawed, could not attain its proper ſtation in the ſyſtem of Europe. But the death of Henry V. of England, happily for France, and not unfortunately for his own country, delivered the French from the calamity of having a foreign maſter ſeated on their throne. The weakneſs of a long minority, the diſſenſions in the Engliſh court, together with the unſteady and languid conduct which theſe occaſioned, afforded the French a favourable opportunity of recovering the territories which they had loſt. The native valour of the French nobility heightened to an enthuſiaſtic confidence by a ſuppoſed interpoſition of Heaven in their behalf; conducted in the field by ſkilful leaders; and directed in the cabinet by a prudent monarch; was exerted with ſuch vigour and ſucceſs, during this favourable juncture, as not only wreſted from the Engliſh their new conqueſts, but ſtript them of their ancient poſſeſſions in France, and reduced them within the narrow precincts of Calais, and its petty territory.

As ſoon as ſo many conſiderable provinces were reunited to their dominions, the kings of France, conſcious of this acquiſition of ſtrength, began to form bolder ſchemes of interior policy, as well as of foreign operations. They immediately became formidable to their neighbours, who began to fix their attention on their meaſures and motions, the importance of which they fully perceived. From this æra, France, poſſeſſed of the advantages which it derives from the ſituation and contiguity of its territories, as well as from the number and valour of its people, roſe to new influence in Europe, and was the firſt power in a condition to give alarm to the jealouſy or fears of the ſtates around it.

Nor was France indebted for this increaſe of importance merely to the reunion of the provinces which had been torn from it. A circumſtance attended the recovery of theſe, which, though leſs conſiderable, and leſs obſerved, contributed not a little to give additional vigour and deciſion to all the efforts of that monarchy. During the obſtinate ſtruggles between France and England, all the defects of the military ſyſtem under the feudal government were ſenſibly felt. A war of long continuance languiſhed, when carried on by troops bound and accuſtomed to keep the field for a ſhort time. Armies, compoſed chiefly of heavy-armed cavalry, were unfit either for the defence or the attack of the many towns and caſtles, which it became neceſſary to guard or to reduce. In order to obtain ſuch permanent and effective force, as became requiſite during theſe lengthened conteſts, the kings of France took into their pay conſiderable bands of mercenary ſoldiers, levied ſometimes among their own ſubjects, and ſometimes in foreign countries. But as the feudal policy provided no ſufficient fund for ſuch extraordinary ſervice, theſe adventurers were diſmiſſed at the cloſe of every campaign, or upon any proſpect of accommodation; and having been little accuſtomed to the reſtraints of diſcipline, they frequently turned their arms againſt the country which they had been hired to defend, and deſolated it with cruelty not inferior to that of its foreign enemies.

A body of troops kept conſtantly on foot, and regularly trained to military ſubordination, would have ſupplied what was wanting in the feudal conſtitution, and have furniſhed princes with the means of executing enterprizes, to which they were then unequal. Such an eſtabliſhment, however, was ſo repugnant to the genius of feudal policy, and ſo incompatible with the privileges and pretenſions of the nobility, that during ſeveral centuries no monarch was either ſo bold, or ſo powerful, as to venture on any ſtep towards introducing it. At laſt, Charles VII. availing himſelf of the reputation which he had acquired by his ſucceſſes againſt

the Engliſh, and taking advantage of the impreſſions of terror which ſuch a formidable enemy had left upon the minds of his ſubjects, executed that which his predeceſſors durſt not attempt. Under pretence of having always ready a force ſufficient to defend the kingdom againſt any ſudden invaſion of the Engliſh, he, at the time when he diſbanded his other troops [A. D. 1445], retained under arms a body of nine thouſand cavalry, and of ſixteen thouſand infantry. He appropriated funds for the regular payment of theſe; he ſtationed them in different places of the kingdom, according to his pleaſure; and appointed the officers who commanded and diſciplined them. The prime nobility courted this ſervice, in which they were taught to depend on their ſovereign, to execute his orders, and to look up to him as the judge and rewarder of their merit. The feudal militia, compoſed of the vaſſals whom the nobles could call out to follow their ſtandard, as it was in no degree comparable to a body of ſoldiers regularly trained to war, ſunk gradually in reputation. The ſtrength of an army was no longer eſtimated ſolely by the number of cavalry which ſerved in it. From the time that gun-powder was invented, and the uſe of cannon in the field became general, horſemen caſed in complete armour loſt all the advantages which gave them the pre-eminence over other ſoldiers. The helmet, the ſhield, and the breaſt-plate, which reſiſted the arrow or the ſpear, no longer afforded them ſecurity againſt theſe new inſtruments of deſtruction. The ſervice of infantry roſe again into eſteem, and victories were gained, and conqueſts made, chiefly by their efforts. The nobles and their military tenants, though ſometimes ſummoned to the field, according to ancient form, were conſidered as an incumbrance upon the troops with which they acted; and were viewed with contempt by ſoldiers accuſtomed to the vigorous and ſteady operations of regular ſervice.

Thus the regulations of Charles the VII. by eſtabliſhing the firſt ſtanding army known in Europe, occaſioned an

important revolution in its affairs and policy. By taking from the nobles the ſole direction of the national military force, which had raiſed them to ſuch high authority and importance, a deep wound was given to the feudal ariſtocracy, in that part where its power ſeemed to be moſt complete.

France, by forming this body of regular troops at a time when there was hardly a ſquadron or company kept in conſtant pay in any other part of Europe, acquired ſuch advantages over its neighbours, either in attack or defence, that ſelf-preſervation made it neceſſary for them to imitate its example. Mercenary troops were introduced into all the conſiderable kingdoms on the continent. They gradually become the only military force that was employed or truſted. It has long been the chief object of policy to increaſe and to ſupport them. It has long been the great aim of princes and miniſters to diſcredit and to annihilate all other means of national activity or defence.

As the kings of France got the ſtart of other powers in eſtabliſhing a military force in their dominions, which enabled them to carry on foreign operations with more vigour, and to greater extent, ſo they were the firſt who effectually broke the feudal ariſtocracy, and humbled the great vaſſals of the crown, who by their exorbitant power had long circumſcribed the royal prerogative within very narrow limits, and had rendered all the efforts of the monarchs of Europe inconſiderable. Many things concurred to undermine, gradually, the power of the feudal ariſtocracy in France. The wealth and property of the nobility were greatly impaired during the long wars which the kingdom was obliged to maintain with the Engliſh. The extraordinary zeal with which they exerted themſelves in defence of their country againſt its ancient enemies, exhauſted entirely the fortunes of ſome great families. As almoſt every province in the kingdom was, in its turn, the ſeat of war, the lands of others were expoſed to the depredations of the enemy, were ravaged by the mercenary troops which their ſovereigns hir-

ed occaſionally, but could not pay, or were deſolated with rage ſtill more deſtructive, by the peaſants, in different inſurrections. At the ſame time, the neceſſities of government having forced their kings upon the deſperate expedient of making great and ſudden alterations in the current coin of the kingdom, the fines, quit-rents, and other payments fixed by ancient cuſtom, ſunk much in value, and the revenues of a fief were reduced far below the ſum which it had once yielded. During their conteſts with the Engliſh, in which a generous nobility courted every ſtation where danger appeared, or honour could be gained, many families of note became extinct, and their fiefs were reunited to the crown. Other fiefs, in a long courſe of years, fell to female heirs, and were divided among them; were diminiſhed by profuſe donations to the church, or were broken and ſplit by the ſucceſſion of remote collateral heirs*.

Encouraged by theſe manifeſt ſymptoms of decline in that body which he wiſhed to depreſs, Charles VII. during the firſt interval of peace with England, made ſeveral efforts towards eſtabliſhing the regal prerogative on the ruins of the ariſtocracy. But his obligations to the nobles were ſo many, as well as recent, and their ſervices in recovering the kingdom ſo ſplendid, as rendered it neceſſary for him to proceed with moderation and caution. Such, however, was the authority which the crown had acquired by the progreſs of its arms againſt the Engliſh, and ſo much was the power of the nobility diminiſhed, that, without any oppoſition, he ſoon made innovations of great conſequence in the conſtitution. He not only eſtabliſhed that formidable body of regular troops, which has been mentioned, but he was the firſt monarch of France who, by his royal edict [A. D. 1440], without the concurrence of the States-general of the kingdom, levied an extraordinary ſubſidy on his people. He prevailed likewiſe with his ſubjects, to render ſeveral

* Boulainvilliers Hiſtoire de Gouvernement de France, Lettre xii.

taxes perpetual, which had formerly been impoſed occaſionally, and exacted during a ſhort time. By means of all theſe innovations, he accquired ſuch an increaſe of power, and extended his prerogative ſo far beyond its ancient limits, that, from being the moſt dependent prince who had ever ſat upon the throne of France, he came to poſſeſs, during the latter years of his reign, a degree of authority which none of his predeceſſors had enjoyed for ſeveral ages*.

The plan of humbling the nobility which Charles began to execute, his ſon Louis XI. carried on with a bolder ſpirit, and with greater ſucceſs. Louis was formed by nature to be a tyrant; and at whatever period he had been called to aſcend the throne, his reign muſt have abounded with ſchemes to oppreſs his people, and to render his own power abſolute. Subtile, unfeeling, cruel; a ſtranger to every principle of integrity, and regardleſs of decency, he ſcorned all the reſtraints which a ſenſe of honour, or the deſire of fame, impoſe even upon ambitious men. Sagacious, at the ſame time, to diſcern what he deemed his true intereſt, and influenced by that alone, he was capable of purſuing it with a perſerving induſtry, and of adhering to it with a ſyſtematic ſpirit, from which no object could divert, and no danger could deter him.

The maxims of his adminiſtration were as profound as they were fatal to the privileges of the nobility. He filled all the departments of government with new men, and often with perſons whom he called from the loweſt as well as moſt deſpiſed functions of life, and raiſed at pleaſure to ſtations of great power or truſt. Theſe were his only confidents, whom he conſulted in forming his plans, and to whom he committed the execution of them: while the nobles, accuſtomed to be the companions, the favourites, and the miniſters of their ſovereigns, were treated with ſuch ſtudied and mortifying

* Hiſtoire de France par Valley & Villaret, tom. xv. 331, &c. 389. tom. xvi. 324. Variations de la Monarchie Francoiſe, tom. iii. 162.

neglect, that if they would not ſubmit to follow a court in which they appeared without any ſhadow of their ancient power, they were obliged to retire to their caſtles, where they remained unemployed and forgotten. Not ſatisfied with having rendered the nobles of leſs conſideration, by taking out of their hands the ſole direction of affairs, Louis added inſult to neglect; and by violating their moſt valuable privileges, endeavoured to degrade the order, and to reduce the members of it to the ſame level with other ſubjects. Perſons of the higheſt rank among them, if ſo bold as to oppoſe his ſchemes, or ſo unfortunate as to awaken the jealouſy of his capricious temper, were perſecuted with rigour, from which all who belonged to the order of nobility had hitherto been exempted; they were tried by judges who had no right to take cognizance of their actions; and were ſubject to torture, or condemned to an ignominious death, without regard to their birth or condition. The people accuſtomed to ſee the blood of the moſt illuſtrious perſonages ſhed by the hands of the common executioner, to behold them ſhut up in dungeons, and carried about in cages of iron, began to view the nobility with leſs reverence than formerly, and looked up with terror to the royal authority, which ſeemed to have humbled or annihilated every other power in the kingdom.

At the ſame time, Louis, being afraid that oppreſſion might rouſe the nobles, whom the rigour of his government had intimidated, or that ſelf-preſervation might at laſt teach them to unite, dexterouſly ſcattered among them the ſeeds of diſcord; and induſtriouſly fomented thoſe ancient animoſities between the great families, which the ſpirit of jealouſy and emulation, natural to the feudal government, had originally kindled and ſtill kept alive. To accompliſh this, all the arts of intrigue, all the myſteries and refinements of his fraudulent policy were employed, and with ſuch ſucceſs, that at a juncture which required the moſt ſtrenuous efforts, as well as the moſt perfect union, the nobles never acted, ex-

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* Hiſtoire de France par Valley & Villaret, tom. xv. 331, &c. 389. tom. xvi. 324. Variations de la Monarchie Francoiſe, tom. iii. 162.

neglect, that if they would not ſubmit to follow a court in which they appeared without any ſhadow of their ancient power, they were obliged to retire to their caſtles, where they remained unemployed and forgotten. Not ſatisfied with having rendered the nobles of leſs conſideration, by taking out of their hands the ſole direction of affairs, Louis added inſult to neglect; and by violating their moſt valuable privileges, endeavoured to degrade the order, and to reduce the members of it to the ſame level with other ſubjects. Perſons of the higheſt rank among them, if ſo bold as to oppoſe his ſchemes, or ſo unfortunate as to awaken the jealouſy of his capricious temper, were perſecuted with rigour, from which all who belonged to the order of nobility had hitherto been exempted; they were tried by judges who had no right to take cognizance of their actions; and were ſubject to torture, or condemned to an ignominious death, without regard to their birth or condition. The people accuſtomed to ſee the blood of the moſt illuſtrious perſonages ſhed by the hands of the common executioner, to behold them ſhut up in dungeons, and carried about in cages of iron, began to view the nobility with leſs reverence than formerly, and looked up with terror to the royal authority, which ſeemed to have humbled or annihilated every other power in the kingdom.

At the ſame time, Louis, being afraid that oppreſſion might rouſe the nobles, whom the rigour of his government had intimidated, or that ſelf-preſervation might at laſt teach them to unite, dexterouſly ſcattered among them the ſeeds of diſcord; and induſtriouſly fomented thoſe ancient animoſities between the great families, which the ſpirit of jealouſy and emulation, natural to the feudal government, had originally kindled and ſtill kept alive. To accompliſh this, all the arts of intrigue, all the myſteries and refinements of his fraudulent policy were employed, and with ſuch ſucceſs, that at a juncture which required the moſt ſtrenuous efforts, as well as the moſt perfect union, the nobles never acted, ex-

cept during one ſhort ſally of reſentment at the beginning of his reign, either with vigour or in concert.

As he ſtripped the nobility of their privileges, he added to the power and prerogative of the crown. In order to have at command ſuch a body of ſoldiers as might be ſufficient to cruſh any force that his diſaffected ſubjects could draw together, he not only kept on foot the regular troops which his father had raiſed, but, beſides augmenting their number conſiderably, he took into his pay ſix thouſand Swiſs, at that time the beſt diſciplined and moſt formidable infantry in Europe*. From the jealouſy natural to tyrants, he confided in theſe foreign mercenaries, as the moſt devoted inſtruments of oppreſſion, and the moſt faithful guardians of the power which he had uſurped. That they might be ready to act on the ſhorteſt warning, he, during the latter years of his reign, kept a conſiderable body of them encamped in one place†.

Great funds were requiſite, not only to defray the expence of this additional eſtabliſhment, but to ſupply the ſums employed in the various enterprizes which the reſtleſs activity of his genius prompted him to undertake. But the prerogative that his father had aſſumed of levying taxes without the concurrence of the States-general, which he was careful not only to retain but to extend, enabled him to provide in ſome meaſure for the encreaſing charges of government.

What his prerogative, enlarged as it was, could not furniſh, his addreſs procured. He was the firſt monarch in Europe who diſcovered the method of managing thoſe great aſſemblies, in which the feudal policy had veſted the power of granting ſubſidies and of impoſing taxes. He firſt taught other princes the fatal art of beginning their attack on public liberty, by corrupting the

* Mem. de Comines, tom. i. 367. Dan. Hiſt. de la Milice Françoiſe, tom. i. 182.

† Mem. de Com. tom. i. 381.

ſource from which it ſhould flow. By exerting all his power and addreſs in influencing the election of repreſentatives, by bribing or overawing the members, and by various changes which he artfully made in the form of their deliberations, Louis acquired ſuch entire direction of theſe aſſemblies, that, from being the vigilant guardians of the privileges and property of the people, he rendered them tamely ſubſervient towards promoting the moſt odious meaſures of his reign*, As no power remained to ſet bounds to his exactions, he not only continued all the taxes impoſed by his father, but made great additions to them, which amounted to a ſum that appeared aſtoniſhing to his contemporaries†. §

Nor was it the power alone or wealth of the crown that Louis increaſed; he extended its territories by acquiſitions of various kinds. He got poſſeſſion of Rouſillon by purchaſe; Provence was conveyed to him by the will of Charles d'Anjou; and upon the death of Charles the Bold, he ſeized with a ſtrong hand Burgundy and Artois, which had belonged to that prince. Thus, during the courſe of a ſingle reign, France was formed into one compact kingdom, and the ſteady unrelenting policy of Louis XI. not only ſubdued the haughty ſpirit of the feudal nobles, but eſtabliſhed a ſpecies of government, ſcarcely leſs abſolute, or leſs terrible than eaſtern deſpotiſm.

But fatal as his adminiſtration was to the liberties of his ſubjects, the authority which he acquired, the reſources of which he became maſter, and his freedom from reſtraint in concerting his plans as well as in executing them, rendered his reign active and enterprizing. Louis negotiated in all the courts of Europe; he obſerved the motions of all his neigh-

* Mem. de Comin. tom. i. 136. Chron. Scandal. ibid. tom. ii. p. 71.

†Mem. de Com. tom. i. 334.

§ Charles VII. levied taxes to the amount of 1,800,000 francs; Louis XI. raiſed 4,700,000. The former had in pay 9000 cavalry and 16,000 infantry. The latter augmented the cavalry to 15,000, and the infantry to 25,000. Mem. de Comines, i, 384.

bours; he engaged, either as principal, or as an auxiliary, in every great tranſaction; his reſolutions were prompt, his operations vigorous; and upon every emergence he could call forth into action the whole force of his kingdom. From the era of his reign, the kings of France, no longer fettered and circumſcribed at home by a jealous nobility, have exerted themſelves more abroad, have formed more extenſive ſchemes of foreign conqueſts, and have carried on war with a ſpirit and vigour long unknown in Europe.

The example which Louis ſet was too inviting not to be imitated by other princes. Henry VII. as ſoon as he was ſeated on the throne of England, formed the plan of enlarging his own prerogative, by breaking the power of the nobility. The circumſtances under which he undertook to execute it, were leſs favourable than thoſe which induced Charles VII. to make the ſame attempt; and the ſpirit with which he conducted it, was very different from that of Louis XI. Charles, by the ſucceſs of his arms againſt the Engliſh, by the merit of having expelled them out of ſo many provinces, had eſtabliſhed himſelf ſo firmly in the confidence of his people, as encouraged him to make bold encroachments on the ancient conſtitution. The daring genius of Louis broke through every barrier, and endeavoured to ſurmount or to remove every obſtacle that ſtood in his way. But Henry held the ſceptre by a diſputed title; a popular faction was ready every moment to take arms againſt him; and after long civil wars, during which the nobility had often diſplayed their power in creating and depoſing kings, he felt that the regal authority had been ſo much relaxed, and that he entered into poſſeſſion of a prerogative ſo much abridged, as rendered it neceſſary to carry on his meaſures deliberately, and without any violent exertion. He endeavoured to undermine that formidable ſtructure, which he durſt not attack by open force. His ſchemes, though cautious and ſlow in their operation, were well con-

certed, and productive in the end of great effects. By his laws permitting the barons to break the entails of their eſtates, and expoſe them to ſale; by his regulations to prevent the nobility from keeping in their ſervice thoſe numerous bands of retainers, which rendered them formidable and turbulent; by favouring the riſing power of the commons; by encouraging population, agriculture, and commerce; by ſecuring to his ſubjects, during a long reign, the enjoyment of the bleſſings which flow from the arts of peace; by accuſtoming them to an adminiſtration of government, under which the laws were executed with ſteadineſs and vigour; he made imperceptibly conſiderable alterations in the Engliſh conſtitution, and tranſmitted to his ſucceſſor authority ſo extenſive, as rendered him one of the moſt abſolute monarchs in Europe, and capable of the greateſt and moſt vigorous efforts.

In Spain, the union of all its crowns by the marriage of Ferdinand and Iſabella; the glory that they acquired by the conqueſt of Granada, which brought the odious dominion of the Moors to a period; the command of the great armies which it had been neceſſary to keep long on foot, in order to accompliſh this; the wiſdom and ſteadineſs of their adminiſtration; and the addreſs with which they availed themſelves of every incident that occurred to humble the nobility, and to extend their own prerogative, conſpired in raiſing theſe monarchs to ſuch eminence and authority, as none of their predeceſſors had ever enjoyed. Though ſeveral cauſes, which ſhall be explained in another place, prevented their attaining the ſame powers with the kings of France and England, and preſerved the feudal conſtitution longer entire in Spain, their great abilities ſupplied the defects of their prerogative, and improved with ſuch dexterity all the advantages which they poſſeſſed, that Ferdinand carried on his foreign operations, which were very extenſive, with extraordinary vigour and effect.

While theſe princes were thus enlarging the boundaries

of prerogative, and taking ſuch ſteps towards rendering their kingdoms capable of acting with union and force, events occurred, which called them forth to exert the new powers which they had acquired. Theſe engaged them in ſuch a ſeries of enterprizes and negotiations, that the affairs of all the conſiderable nations in Europe came to be inſenſibly interwoven with each other; and a great political ſyſtem was gradually formed, which grew to be an object of univerſal attention.

The firſt event which merits notice, on account of its influence, in producing this change in the ſtate of Europe, was the marriage of the daughter of Charles the Bold, the ſole heireſs of the houſe of Burgundy. For ſome years before her father's death, ſhe had been conſidered as the apparent ſucceſſor to his territories, and Charles had made propoſals of marrying her to ſeveral different princes, with a view of alluring them, by that offer, to favour the ſchemes which his reſtleſs ambition was continually forming.

This rendered the alliance with her an object of general attention; and all the advantages of acquiring poſſeſſion of her territories, the moſt opulent at that time, and the beſt cultivated of any on this ſide of the Alps, were perfectly underſtood. As ſoon, then, as the untimely death of Charles opened the ſucceſſion [A. D. 1477, Jan. 5,] the eyes of all the princes in Europe were turned towards Mary, and they felt themſelves deeply intereſted in the choice which ſhe was about to make of the perſon on whom ſhe would beſtow that rich inheritance.

Louis XI. from whoſe kingdom ſeveral of the provinces which ſhe poſſeſſed had been diſmembered, and whoſe dominions ſtretched along the frontiers of her territories, had every inducement to court her alliance. He had, likewiſe a good title to expect the favourable reception of any reaſonable propoſition he ſhould make, with reſpect to the diſpoſal of a princeſs, who was the vaſſal of his crown, and deſcended from the royal blood of France. There were only

two propoſitions, however, which he could make with propriety. The one was the marriage of the dauphin, the other that of the count of Angouleme, a prince of the blood, with the heireſs of Burgundy. By the former, he would have annexed all her territories to his crown, and have rendered France at once the moſt reſpectable monarchy in Europe. But the great diſparity of ages between the two parties, Mary being twenty and the dauphin only eight years old; the avowed reſolution of the Flemings, not to chooſe a maſter poſſeſſed of ſuch power as might enable him to form ſchemes dangerous to their liberties; together with their dread of falling under the odious and oppreſſive government of Louis, were obſtacles in the way of executing this plan which it was vain to think of ſurmounting. By the latter, the accompliſhment of which might have been attained with eaſe, Mary having diſcovered ſome inclination to a match with the count of Angouleme*, Louis would have prevented the dominions of the houſe of Burgundy from being conveyed to a rival power, and in return for ſuch a ſplendid eſtabliſhment for the count of Angouleme, he muſt have obtained, or would have extorted from him, conceſſions highly beneficial to the crown of France. But Louis had been accuſtomed ſo long to the intricacies of a crooked and inſidious policy, that he could not be ſatisfied with what was obvious and ſimple; and was ſo fond of artifice and refinement, that he came to conſider theſe rather as an ultimate object, than merely as the means of conducting affairs. From this principle, no leſs than from his unwillingneſs to aggrandize any of his own ſubjects, or from his deſire of oppreſſing the houſe of Burgundy, which he hated, he neglected the courſe which a prince leſs able and artful would have taken, and followed one more ſuited to his own genius.

He propoſed to render himſelf, by force of arms, maſter of thoſe provinces which Mary held of the crown of France, and even to puſh his conqueſts into her other territories,

* Mem. de Comines, i. 358.

while he amuſed her with inſiſting continually on the impracticable match with the dauphin. In proſecuting this plan, he diſplayed wonderful talents and induſtry, and exhibited ſuch ſcenes of treachery, falſehood, and cruelty, as are amazing even in the hiſtory of Louis XI. Immediately upon the death of Charles, he put his troops in motion, and advanced towards the Netherlands. He corrupted the leading men in the provinces of Burgundy and Artois, and ſeduced them to deſert their ſovereign. He got admiſſion into ſome of the frontier towns by bribing the governors; the gates of others were opened to him in conſequence of his intrigues with the inhabitants. He negotiated with Mary; and, in order to render her odious to her ſubjects, he betrayed to them her moſt important ſecrets. He carried on a private correſpondence with the two miniſters whom ſhe chiefly truſted, and then communicated the letters which he had received from them to the ſtates of Flanders, who, enraged at their perfidy, brought them immediately to trial, tortured them with extreme cruelty, and, unmoved by the tears and entreaties of their ſovereign, who knew and approved of all that the miniſters had done, they beheaded them in her preſence*.

While Louis, by this conduct, unworthy of a great monarch, was ſecuring the poſſeſſion of Burgundy, Artois, and the towns on the Somme, the ſtates of Flanders carried on a negotiation with the emperor Frederic III. and concluded a treaty of marriage between their ſovereign and his ſon Maximilian, archduke of Auſtria [A.D. 1477]. The illuſtrious birth of that prince, as well as the high dignity of which he had the proſpect, rendered the alliance honourable for Mary, while, from the diſtance of his hereditary territories, and the ſcantineſs of his revenues, his power was ſo inconſiderable, as did not excite the jealouſy or fear of the Flemings.

Thus Louis, by the caprice of his temper, and the exceſs

* Mem. de Comines, liv. v. chap. 15. p. 309, &c.

of his refinements, put the houſe of Auſtria in poſſeſſion of this noble inheritance. By this acquiſition, the foundation of the future grandeur of Charles V. was laid; and he became maſter of thoſe territories, which enabled him to carry on his moſt formidable and deciſive operations againſt France. Thus, too, the ſame monarch who firſt united the interior force of France, and eſtabliſhed it on ſuch a footing, as to render it formidable to the reſt of Europe, contributed, far contrary to his intention, to raiſe up a rival power, which, during two centuries, has thwarted the meaſures, oppoſed the arms, and checked the progreſs of his ſucceſſors.

The next event of conſequence in the fifteenth century, was the expedition of Charles VIII. into Italy [A.D. 1494]. This occaſioned revolutions no leſs memorable; produced alterations, both in the military and political ſyſtem, which were more immediately perceived; rouſed the ſtates of Europe to bolder efforts; and blended their affairs and intereſts more cloſely together. The mild adminiſtration of Charles, a weak but generous prince, ſeems to have revived the ſpirit and genius of the French nation, which the rigid deſpotiſm of Louis XI. his father, had depreſſed, and almoſt extinguiſhed. The ardour for military ſervice, natural to the French nobility, returned, and their young monarch was impatient to diſtinguiſh his reign by ſome ſplendid enterprize. While he was uncertain towards what quarter he ſhould turn his arms, the ſolicitations and intrigues of an Italian politician, no leſs infamous on account of his crimes, than eminent for his abilities, determined his choice. Ludovico Sforza, having formed the deſign of depoſing his nephew the duke of Milan, and of placing himſelf on the ducal throne, was ſo much afraid of a combination of the Italian powers to oppoſe this meaſure, and to ſupport the injured prince, with whom moſt of them were connected by blood or alliance, that he ſaw the neceſſity of ſecuring the aid of ſome able protector. The king of France was the perſon to whom he applied; and without diſcloſing his

own intentions, he laboured to prevail with him to march into Italy, at the head of a powerful army, in order to ſeize the crown of Naples, to which Charles had pretenſions as heir of the houſe of Anjou. The right to that kingdom, claimed by the Angevin family, had been conveyed to Louis XI. by Charles of Anjou, count of Maine and Provence. But that ſagacious monarch, though he took immediate poſſeſſion of thoſe territories of which Charles was really maſter, totally diſregarded his ideal title to a kingdom, over which another prince reigned in tranquillity; and uniformly declined involving himſelf in the labyrinth of Italian politics. His ſon, more adventurous, or more inconſiderate, embarked eagerly in this enterprize; and contemning all the remonſtrances of his moſt experienced counſellors, prepared to carry it on with the utmoſt vigour.

The power which Charles poſſeſſed was ſo great, that he reckoned himſelf equal to this arduous undertaking. His father had tranſmitted to him ſuch an ample prerogative, as gave him the entire command of his kingdom. He himſelf had added conſiderably to the extent of his dominions, by his prudent marriage with the heireſs of Bretagne, which rendered him maſter of that province, the laſt of the great fiefs that remained to be annexed to the crown. He ſoon aſſembled forces which he thought ſufficient; and ſo impatient was he to enter on his career as a conqueror, that ſacrificing what was real, for what was chimerical, he reſtored Rouſillon to Ferdinand, and gave up part of his father's acquiſitions in Artois to Maximilian, with a view of inducing theſe princes not to moleſt France, while he was carrying on his operations in Italy.

But ſo different were the efforts of the ſtates of Europe in the fifteenth century, from thoſe which we ſhall behold in the courſe of this hiſtory, that the army with which Charles undertook this great enterprize, did not exceed twenty thouſand men. The train of artillery, however, the ammunition, and warlike ſtores of every kind provided for

its uſe, were ſo conſiderable, as to bear ſome reſemblance to the immenſe apparatus of modern war*.

When the French entered Italy, they met with nothing able to reſiſt them. The Italian powers having remained, during a long period, undiſturbed by the invaſion of any foreign enemy, had formed a ſyſtem with reſpect to their affairs, both in peace and war, peculiar to themſelves. In order to adjuſt the intereſts, and balance the power of the different ſtates into which Italy was divided, they were engaged in perpetual and endleſs negotiations with each other, which they conducted with all the ſubtlety of a refining and deceitful policy. Their conteſts in the field, when they had recourſe to arms, were decided in mock battles, by innocent and bloodleſs victories. Upon the firſt appearance of the danger which now impended, they had recourſe to the arts which they had ſtudied, and employed their utmoſt ſkill in intrigue in order to avert it. But this proving ineffectual, their bands of effeminate mercenaries, the only military force that remained in the country, being fit only for the parade of ſervice, were terrified at the aſpect of real war, and ſhrunk at its approach. The impetuoſity of the French valour appeared to them irreſiſtable. Florence, Piſa, and Rome opened their gates as the French army advanced. The proſpect of this dreadful invaſion ſtruck one king of Naples with ſuch panic terror, that he died (if we may believe hiſtorians) of the fright. Another abdicated his throne from the ſame puſillanimous ſpirit. A third fled out of his dominions, as ſoon as the enemy appeared on the Neapolitan frontiers. Charles, after marching thither from the bottom of the Alps, with as much rapidity, and almoſt as little oppoſition, as if he had been on a progreſs through his own dominions, took quiet poſſeſſion of the throne of Naples, and intimidated or gave law to every power in Italy.

Such was the concluſion of an expedition, that muſt be conſidered as the firſt great exertion of thoſe new powers

* Mezeray Hiſt. tom. ii. 777.

which the princes of Europe had acquired, and now began to exerciſe. Its effects were no leſs conſiderable, than its ſucceſs had been aſtoniſhing. The Italians, unable to reſiſt the impreſſion of the enemy who broke in upon them, permitted him to hold on his courſe undiſturbed. They quickly perceived that no ſingle power, which they could rouſe to action, was an equal match for a monarch who ruled over ſuch extenſive territories, and was at the head of ſuch a martial people; but that a confederacy might accompliſh what the ſeparate members of it durſt not attempt. To this expedient, the only one that remained to deliver or to preſerve them from the yoke, they had recourſe. While Charles inconſiderately waſted his time at Naples in feſtivals and triumphs on account of his paſt ſucceſſes, or was fondly dreaming of future conqueſts in the Eaſt, to the empire of which he now aſpired, they formed againſt him a powerful combination of almoſt all the Italian ſtates, ſupported by the emperor Maximilian, and Ferdinand king of Aragon. The union of ſo many powers, who ſuſpended or forgot all their particular animoſities, that they might act in concert againſt an enemy who had become formidable to them all, awakened Charles from his thoughtleſs ſecurity. He ſaw now no proſpect of ſafety but in returning to France. An army of thirty thouſand men, aſſembled by the allies, was ready to obſtruct his march; and though the French, with a daring courage, which more than countervailed their inferiority in number, broke through that great body and gained a victory, which opened to their monarch a ſafe paſſage into his own territories, he was ſtripped of all his conqueſts in Italy in as ſhort a time as it had taken to acquire them; and the political ſyſtem in that country reſumed the ſame appearance as before his invaſion.

The ſudden and deciſive effect of this confederacy, ſeems to have inſtructed the princes and ſtateſmen of Italy as much as the irruption of the French had diſconcerted and alarmed them. They had extended, on this occaſion, to the affairs

of Europe, the maxims of that political ſcience which had hitherto been applied only to regulate the operations of the petty ſtates in their own country. They had diſcovered the method of preventing any monarch from riſing to ſuch a degree of power, as was inconſiſtent with the general liberty; and had manifeſted the importance of attending to that great ſecret in modern policy, the preſervation of a proper diſtribution of power among all the members of the ſyſtem into which the ſtates of Europe are formed. During all the wars of which Italy from that time was the theatre, and amidſt the hoſtile operations which the imprudence of Louis XII. and the ambition of Ferdinand of Aragon, carried on in that country, with little interruption, from the cloſe of the fifteenth century, to that period at which the ſubſequent hiſtory commences, the maintaining a proper balance of power between the contending parties, became the great object of attention to the ſtateſmen of Italy. Nor was the idea confined to them. Self-preſervation taught other powers to adopt it. It grew to be faſhionable and univerſal. From this era we can trace the progreſs of that intercourſe between nations, which has linked the powers of Europe ſo cloſely together; and can diſcern the operations of that provident policy, which, during peace, guards againſt remote and contingent dangers; and, in war, has prevented rapid and deſtructive conqueſts.

This was not the only effect of the operations which the great powers of Europe carried on in Italy. They contributed to render general ſuch a change, as the French had begun to make in the ſtate of their troops; and obliged all the princes who appeared on this new theatre of action, to put the military force of their kingdoms on an eſtabliſhment ſimilar to that France. When the ſeat of war came to be remote from the countries which maintained the conteſt, the ſervice of the feudal vaſſals ceaſed to be of any uſe; and the neceſſity of employing ſoldiers regularly trained to arms, and kept in conſtant pay, came at once to be evident. When

Charles VIII. marched into Italy, his cavalry was entirely compoſed of thoſe companies of gendarmes, embodied by Charles VII. and continued by Louis XI.; his infantry conſiſted partly of Swiſs, hired of the Cantons, and partly of Gaſcons, armed and diſciplined after the Swiſs model. To theſe Louis XII. added a body of Germans, well known in the wars of Italy by the name of the Black Bands. But neither of theſe monarchs made any account of the feudal militia, or ever had recourſe to that military force which they might have commanded, in virtue of the ancient inſtitutions in their kingdom. Maximilian and Ferdinand, as ſoon as they began to act in Italy, employed ſimilar inſtruments, and truſted the execution of their plans entirely to mercenary troops.

This innovation in the military ſyſtem was quickly followed by another, which the cuſtom of employing Swiſs in the Italian wars was the occaſion of introducing. The arms and diſcipline of the Swiſs were different from thoſe of other European nations. During their long and violent ſtruggles in defence of their liberties againſt the houſe of Auſtria, whoſe armies, like thoſe of other conſiderable princes, conſiſted chiefly of heavy-armed cavalry, the Swiſs found that their poverty, and the ſmall number of gentlemen reſiding in their country, at that time barren and ill cultivated, put it out of their power to bring into the field any body of horſe capable of facing the enemy. Neceſſity compelled them to place all their confidence in infantry; and in order to render it capable of withſtanding the ſhock of cavalry, they gave the ſoldiers breaſt-plates and helmets as defenſive armour; together with long ſpears, halberts, and heavy ſwords, as weapons of offence. They formed them into large battalions ranged in deep and cloſe array, ſo that they could preſent on every ſide a formidable front to the enemy*. The men at arms could make no impreſſion on the ſolid ſtrength of ſuch a body. It repulſed the Auſtrians in all their attempts to conquer Swiſ-

* Machiavel's Art of War, b. ii. chap. ii. p. 451.

ſerland. It broke the Burgundian gendarmerie, which was ſcarcely inferior to that of France, either in number or reputation; and when firſt called to act in Italy, it bore down, by its irreſiſtable, force, every enemy that attempted to oppoſe it. Theſe repeated proofs of the deciſive effect of infantry, exhibited on ſuch conſpicuous occaſions, reſtored that ſervice to reputation, and gradually re-eſtabliſhed the opinion which had been long exploded, of its ſuperior importance in the operations of war. But the glory which the Swiſs had acquired, having inſpired them with ſuch high ideas of their own proweſs and conſequence as frequently rendered them mutinous and inſolent, the princes who employed them became weary of depending on the caprice of foreign mercenaries, and began to turn their attention towards the improvement of their national infantry.

The German powers having the command of men, whom nature has endowed with that ſteady courage and perſevering ſtrength which forms them to be ſoldiers, ſoon modelled their troops in ſuch a manner, that they vied with the Swiſs both in diſcipline and valour.

The French monarchs, though more ſlowly, and with greater difficulty, accuſtomed the impetuous ſpirit of their people to ſubordination and diſcipline; and were at ſuch pains to render their national infantry reſpectable, that as early as the reign of Louis XII. ſeveral gentlemen of high rank had ſo far abandoned their ancient ideas, as to condeſcend to enter into that ſervice‡.

The Spaniards, whoſe ſituation made it difficult to employ any other than their national troops in the ſouthern parts of Italy, which was the chief ſcene of their operations in that country, not only adopted the Swiſs diſcipline, but improved upon it, by mingling a proper number of ſoldiers, armed with heavy muſkets, in their battalions; and thus formed that famous body of infantry, which during a century and a half, was the admiration and terror of all Europe.

‡ Brantome, tom. x. p. 18. Mem. de Fleuranges, 143.

The Italian ſtates gradually diminiſhed the number of their cavalry, and, in imitation of their more powerful neighbours, brought the ſtrength of their armies to conſiſt in foot ſoldiers. From this period the nations of Europe have carried on war with forces more adapted to every ſpecies of ſervice, more capable of acting in every country, and better fitted both for making conqueſts, and for preſerving them.

As their efforts in Italy led the people of Europe to theſe improvements in the art of war, they gave them likewiſe the firſt idea of the expence with which it is accompanied when extenſive or of long continuance, and accuſtomed every nation to the burden of ſuch impoſitions as are neceſſary for ſupporting it. While the feudal policy ſubſiſted in full vigour, while armies were compoſed of military vaſſals called forth to attack ſome neighbouring power, and to perform, in a ſhort campaign, the ſervices which they owed to their ſovereign, the expence of war was extremely moderate. A ſmall ſubſidy enabled a prince to begin and to finiſh his greateſt military operations. But when Italy became the theatre on which the powers of Europe contended for ſuperiority, the preparations requiſite for ſuch a diſtant expedition, the pay of armies kept conſtantly on foot, their ſubſiſtence in a foreign country, the ſieges to be undertaken, and the towns to be defended, ſwelled the charges of war immenſely, and, by creating demands unknown in leſs active times, multiplied taxes in every kingdom. The progreſs of ambition, however, was ſo rapid, and princes extended their operations ſo faſt, that it was impoſſible at firſt to eſtabliſh funds proportional to the increaſe of expence which theſe occaſioned. When Charles VIII. invaded Naples, the ſums requiſite for carrying on that enterprize ſo far exceeded thoſe which France had been accuſtomed to contribute for the ſupport of government, that before he reached the frontiers of Italy, his treaſury was exhauſted, and the domeſtic reſources, of which his extenſive prerogative gave him the command, were at an end. As he durſt not venture to lay any new

impoſition on his people, oppreſſed already with the weight of unuſual burdens; the only expedient that remained was, to borrow of the Genoeſe as much money as might enable him to continue his march. But he could not obtain a ſufficient ſum, without conſenting to pay annually the exorbitant intereſt of forty-two livres for every hundred that he received†. We may obſerve the ſame diſproportion between the efforts and revenues of other princes, his contemporaries. From this period, taxes went on increaſing; and during the reign of Charles V. ſuch ſums were levied in every ſtate, as would have appeared enormous at the cloſe of the fifteenth century, and gradually prepared the way for the ſtill more exorbitant exactions of modern times.

The laſt tranſaction, previous to the reign of Charles V. that merits attention on account of its influence upon the ſtate of Europe, is the league of Cambray. To humble the republic of Venice, and to divide its territories, was the object of all the powers who united in this confederacy. The civil conſtitution of Venice, eſtabliſhed on a firm baſis, had ſuffered no conſiderable alteration for ſeveral centuries; during which, the ſenate conducted its affairs by maxims of policy no leſs prudent than vigorous, and adhered to theſe with an uniform conſiſtent ſpirit, which gave that commonwealth great advantage over other ſtates, whoſe views and meaſures changed as often as the form of their government, or the perſons who adminiſtered it. By theſe unintermitted exertions of wiſdom and valour, the Venetians enlarged the dominions of their commonwealth, until it became the moſt conſiderable power in Italy; while their extenſive commerce, the uſeful and curious manufactures which they carried on, together with the large ſhare which they had acquired of the lucrative commerce with the Eaſt, rendered Venice the moſt opulent ſtate in Europe.

The power of the Venetians was the object of terror to their Italian neighbours. Their wealth was viewed with

† Mem. de Comines, lib. vii. c. 5. p. 440.

envy by the greateſt monarchs, who could not vie with many of their private citizens in the magnificence of their buildings, in the richneſs of their dreſs and furniture, or in ſplendour and elegance of living §. Julius II. whoſe ambition was ſuperior, and his abilities equal, to thoſe of any pontiff who ever ſat on the papal throne, conceived the idea of this league againſt the Venetians, and endeavoured, by applying to thoſe paſſions which I have mentioned, to perſuade other princes to join in it. By working upon the fears of the Italian powers, and upon the avarice of ſeveral monarchs beyond the Alps, he induced them, in concurrence with other cauſes, which it is not my province to explain, to form one of the moſt powerful confederacies that Europe had ever beheld, againſt thoſe haughty republicans.

The emperor, the king of France, the king of Aragon, the pope, were principals in the league of Cambray, to which almoſt all the princes of Italy acceded, the leaſt conſiderable of them hoping for ſome ſhare in the ſpoils of a ſtate, which they deemed to be now devoted to deſtruction. The Venetians might have diverted this ſtorm, or have broken its force; but with a preſumptuous raſhneſs, to which there is nothing ſimilar in the courſe of their hiſtory, they waited its approach. The impetuous valour of the French rendered ineffectual all their precautions for the ſafety of the republic; and the fatal battle of Ghiarraddada entirely ruined the army, on which they relied for defence. Julius ſeized all the towns which they held in the eccleſiaſtical territories. Ferdinand re-annexed the towns of which they had got poſſeſſion on the coaſt of Calabria, to his Neapolitan dominions. Maximilian, at the head of a powerful army, advanced towards Venice on the one ſide. The French puſhed their conqueſts on the other. The Venetians, ſurrounded by ſo many enemies, and left without one ally, ſunk from the height of preſumption to the depths of deſpair; abandoned all their territories on the continent; and ſhut themſelves up

§ Heliani oratio apud Goldaſtum in polit. Imperial. p. 980.

in their capital, as their laſt refuge, and the only place which they hoped to preſerve.

This rapid ſucceſs, however, proved fatal to the confederacy. The members of it, whoſe union continued while they were engaged in ſeizing their prey, began to feel their ancient jealouſies and animoſities revive, as ſoon as they had a proſpect of dividing it. When the Venetians obſerved theſe ſymptoms of diſtruſt and alienation, a ray of hope broke in upon them; the ſpirit natural to their councils returned; they reſumed ſuch wiſdom and firmneſs, as made ſome atonement for their former imprudence and dejection; they recovered part of the territory which they had loſt; they appeaſed the pope and Ferdinand by well-timed conceſſions in their favour; and at length diſſolved the confederacy, which had brought their commonwealth to the brink of ruin.

Julius, elated with beholding the effects of a league which he himſelf had planned, and imagining that nothing was too arduous for him to undertake, conceived the idea of expelling every foreign power out of Italy, and bent all the force of his mind towards executing a ſcheme ſo well ſuited to his enterprizing genius. He directed his firſt attack againſt the French, who, on many accounts, were more odious to the Italians, than any of the foreigners who had acquired dominion in their country. By his activity and addreſs, he prevailed on moſt of the powers, who had joined in the league of Cambray, to turn their arms againſt the king of France, their former ally; and engaged Henry VIII. who had lately aſcended the throne of England, to favour their operations by invading France. Louis XII. reſiſted all the efforts of this formidable and unexpected confederacy with undaunted fortitude. Hoſtilities were carried on, during ſeveral campaigns, in Italy, on the frontiers of Spain, and in Picardy, with alternate ſucceſs. Exhauſted, at length, by the variety as well as extent of his operations; unable to withſtand a confederacy which brought againſt him ſuperior force, conducted with wiſdom and acting with perſeverance;

Louis found it neceſſary to conclude ſeparate treaties of peace with his enemies; and the war terminated with the loſs of every thing which the French had acquired in Italy, except the caſtle of Milan, and a few inconſiderable towns in that dutchy.

The various negotiations carried on during this buſy period, and the different combinations formed among powers hitherto little connected with each other, greatly increaſed that intercourſe among the nations of Europe, which I have mentioned as one effect of the events in the fifteenth century; while the greatneſs of the object at which different nations aimed, the diſtant expeditions which they undertook, as well as the length and obſtinacy of the conteſt in which they engaged, obliged them to exert themſelves with a vigour and perſeverance unknown in the preceding ages.

Thoſe active ſcenes which the following hiſtory will exhibit, as well as the variety and importance of thoſe tranſactions which diſtinguiſh the period to which it extends, are not to be aſcribed ſolely to the ambition, to the abilities, or to the rivalſhip of Charles V. and of Francis I. The kingdoms of Europe had arrived at ſuch a degree of improvement in the internal adminiſtration of government, and princes had acquired ſuch command of the national force which was to be exerted in foreign wars, that they were in a condition to enlarge the ſphere of their operations, to multiply their claims and pretenſions, and to increaſe the vigour of their efforts. Accordingly the ſixteenth century opened with the certain proſpect of its abounding in great and intereſting events.

## SECT. III.

*View of the Political Conſtitution of the principal States in Europe, at the commencement of the ſixteenth Century.*

HAVING thus enumerated the principal cauſes and events, the influence of which was felt in every part of Europe, and contributed either to improve internal order and police in its various ſtates, or to enlarge the ſphere of their activity, by giving them more entire command of the force with which foreign operations are carried on; nothing farther ſeems requiſite for preparing my readers to enter, with full information, upon peruſing the Hiſtory of Charles V. but to give a view of the political conſtitution and form of civil government in each of the nations which acted any conſiderable part during that period. For as the inſtitutions and events which I have endeavoured to illuſtrate, formed the people of Europe to reſemble each other, and conducted them from barbariſm to refinement, in the ſame path, and by nearly equal ſteps; there were other circumſtances which occaſioned a difference in their political eſtabliſhments, and gave riſe to thoſe peculiar modes of government, which have produced ſuch variety in the character and genius of nations.

It is no leſs neceſſary to become acquainted with the latter, than to have contemplated the former. Without a diſtinct knowledge of the peculiar form and genius of civil government in each ſtate, a great part of its tranſactions muſt appear altogether myſterious and inexplicable. The hiſtorians of particular countries, as they ſeldom extend their views farther than to the amuſement or inſtruction of their fellow-citizens, by whom they might preſume that all their domeſtic cuſtoms and inſtitutions were perfectly underſtood, have often neglected to deſcend into ſuch details with reſpect to theſe, as are ſufficient to convey to foreigners full light and information concerning the occurrences which they relate. But a hiſtory, which comprehends the tranſactions

of ſo many different countries, would be extremely imperfect, without a previous ſurvey of the conſtitution and political ſtate of each. It is from his knowledge of theſe, that the reader muſt draw thoſe principles, which will enable him to judge with diſcernment, and to decide with certainty concerning the conduct of nations.

A minute detail, however, of the peculiar forms and regulations in every country, would lead to deductions of immeaſurable length. To ſketch out the great lines which diſtinguiſh and characteriſe each government, is all that the nature of my preſent work will admit of, and all that is neceſſary to illuſtrate the events which it records.

At the opening of the ſixteenth century, the political aſpect of Italy was extremely different from that of any other part of Europe. Inſtead of thoſe extenſive monarchies, which occupied the reſt of the continent, that delightful country was parcelled out among many ſmall ſtates, each of which poſſeſſed ſovereign and independent juriſdiction. The only monarchy in Italy was that of Naples. The dominion of the popes was of a peculiar ſpecies, to which there is nothing ſimilar either in ancient or modern times. In Venice, Florence, and Genoa, a republican form of government was eſtabliſhed. Milan was ſubject to ſovereigns, who had aſſumed no higher title than that of dukes.

The pope was the firſt of theſe powers in dignity, and not the leaſt conſiderable by the extent of his territories. In the primitive church, the juriſdiction of biſhops was equal and co-ordinate. They derived, perhaps, ſome degree of conſideration from the dignity of the ſee in which they preſided. They poſſeſſed, however, no real authority or preeminence, but what they acquired by ſuperior abilities, or ſuperior ſanctity. As Rome had ſo long been the ſeat of empire, and the capital of the world, its biſhops were on that account entitled to reſpect; they received it; but during ſeveral ages they received, and even claimed, nothing more. From theſe humble beginnings, they advanced with ſuch

adventurous and well-directed ambition, that they eſtabliſhed a ſpiritual dominion over the minds and ſentiments of men, to which all Europe ſubmitted with implicit obedience. Their claim of univerſal juriſdiction, as heads of the church; and their pretenſions to infallibility in their deciſions, as ſucceſſors of St. Peter, are as chimerical, as they are repugnant to the genius of the Chriſtian religion. But on theſe foundations, the ſuperſtition and credulity of mankind enabled them to erect an amazing ſuperſtructure. In all eccleſiaſtical controverſies, their deciſions were received as the infallible oracles of truth. Nor was the plenitude of their power confined ſolely to what was ſpiritual; they dethroned monarchs; diſpoſed of crowns; abſolved ſubjects from the obedience due to their ſovereigns; and laid kingdoms under interdicts. There was not a ſtate in Europe which had not been diſquieted by their ambition. There was not a throne which they had not ſhaken; nor a prince who did not tremble at their power.

Nothing was wanting to render this empire abſolute, and to eſtabliſh it on the ruins of all civil authority, but that the popes ſhould have poſſeſſed ſuch a degree of temporal power, as was ſufficient to ſecond and enforce their ſpiritual decrees. Happily for mankind, at the time when their ſpiritual juriſdiction was moſt extenſive, and moſt revered, their ſecular dominion was extremely limited. They were powerful pontiffs, formidable at a diſtance; but they were petty princes, without any conſiderable domeſtic force. They had early endeavoured, indeed, to acquire territory by arts ſimilar to thoſe which they had employed in extending their ſpiritual juriſdiction. Under pretence of a donation from Conſtantine, and of another from Charlemagne or his father Pepin, they attempted to take poſſeſſion of ſome towns adjacent to Rome. But theſe donations were fictitious, and availed them little. The benefactions, for which they were indebted to the credulity of the Norman adventurers, who conquer-

ed Naples, and to the ſuperſtition of the countefs Matilda, were real, and added ample domains to the Holy See.

But the power of the popes did not increaſe in proportion to the extent of territory which they had acquired. In the dominions annexed to the Holy See, as well as in thoſe ſubject to other princes in Italy, the ſovereign of a ſtate was far from having the command of the force which it contained. During the turbulence and confuſion of the middle ages, the powerful nobility, or leaders of popular factions in Italy, had ſeized the government of different towns; and after ſtrengthening their fortifications, and taking a body of mercenaries into pay, they aſpired at independence. The territory which the church had gained was filled with petty lords of this kind, who left the pope hardly the ſhadow of domeſtic authority.

As theſe uſurpations almoſt annihilated the papal power in the greater part of the towns ſubject to the church, the Roman barons frequently diſputed the authority of the popes, even in Rome itſelf. In the twelfth century, an opinion began to be propagated, "That as the function of eccleſiaſtics was purely ſpiritual, they ought to poſſeſs no property, and to claim no temporal juriſdiction; but, according to the laudable example of their predeceſſors in the primitive church, ſhould ſubſiſt wholly upon their tithes, or upon the voluntary oblations of the people*." This doctrine being addreſſed to men, who had beheld the ſcandalous manner in which the avarice and ambition of the clergy had prompted them to contend for wealth, and to exerciſe power, they liſtened to it with fond attention. The Roman barons, who had felt moſt ſenſibly the rigour of eccleſiaſtical oppreſſion, adopted theſe ſentiments with ſuch ardour, that they ſet themſelves inſtantly to ſhake off the yoke. They endeavoured to reſtore ſome image of their ancient liberty, by reviving the inſtitution of the Roman ſenate [A. D. 1143], in which they veſted ſupreme autho-

* Otto Friſigenſis de Geſtis Frider. Imp. lib. ii. cap. 10.

rity; committing the executive power ſometimes to one chief ſenator, ſometimes to two, and ſometimes to a magiſtrate dignified with the name of *The Patrician*. The popes exerted themſelves with vigour, in order to check this dangerous encroachment on their juriſdiction. One of them, finding all his endeavours ineffectual, was ſo much mortified, that extreme grief cut ſhort his days. Another, having ventured to attack the ſenators at the head of ſome armed men, was mortally wounded in the fray*. During a conſiderable period, the power of the popes, before which the greateſt monarchs in Europe trembled, was circumſcribed within ſuch narrow limits in their own capital, that they durſt hardly exert any act of authority, without the permiſſion and concurrence of the ſenate.

Encroachments were made upon the papal ſovereignty, not only by the uſurpations of the Roman nobility, but by the mutinous ſpirit of the pepole. During ſeventy years of the fourteenth century, the popes fixed their reſidence in Avignon. The inhabitants of Rome, accuſtomed to conſider themſelves as the deſcendants of the people who had conquered the world, and had given laws to it, were too high-ſpirited to ſubmit with patience to the delegated authority of thoſe perſons to whom the popes committed the government of the city. On many occaſions, they oppoſed the execution of the papal mandates, and on the ſlighteſt appearance of innovation or oppreſſion, they were ready to take arms in defence of their own immunities. Towards the middle of the fourteenth century, being inſtigated by Nicholas Rienzo, a man of low birth and a ſeditious ſpirit, but of popular eloquence, and an enterpriſing ambition, they drove all the nobility out of the city, eſtabliſhed a democratical form of government, elected Rienzo tribune of the people, and inveſted him with extenſive authority. But though the frantic proceedings of the tribune ſoon over-

* Otto Friſing. Chron. lib. vii. cap. 27. 31. Id. de Geſt. Frid. lib. i. c. 27. Muratori Annali d'Italia, vol. ix. 398, 404.

turned this new ſyſtem; though the government of Rome was reinſtated in its ancient form; yet every freſh attack contributed to weaken the papal juriſdiction: and the turbulence of the people concurred with the ſpirit of independence among the nobility, in circumſcribing it more and more*. Gregory VII. and other domineering pontiffs, accompliſhed thoſe great things which rendered them ſo formidable to the emperors with whom they contended, not by the force of their arms, or by the extent of their power, but by the dread of their ſpiritual cenſures, and by the effect of their intrigues, which excited rivals, and called forth enemies againſt every prince whom they wiſhed to depreſs or to deſtroy.

Many attempts were made by the popes, not only to humble thoſe uſurpers, who lorded it over the cities in the eccleſiaſtical ſtate, but to break the turbulent ſpirit of the Roman people. Theſe were long unſucceſsful. But at laſt Alexander VI. with a policy no leſs artful than flagitious, ſubdued and extirpated moſt of the great Roman barons, and rendered the popes maſters of their own dominions. The enterpriſing ambition of Julius II. added conqueſts of no inconſiderable value to the patrimony of St. Peter. Thus the popes, by degrees, became powerful temporal princes. Their territories, in the age of Charles V. were of greater extent than at preſent; their country ſeems to have been better cultivated as well as more populous; and as they drew large contributions from every part of Europe, their revenues far exceeded thoſe of the neighbouring powers, and rendered them capable of more ſudden and vigorous efforts.

The genius of the papal government, however, was better adapted to the exerciſe of ſpiritual dominion, than of temporal power. With reſpect to the former, all its maxims

* Hiſtoire Florentine de Giov. Villani, lib. xii. c. 89. 104. ap. Murat. Script. Rerum Ital. vol. xiii. Vita de Cola di Rienzo, ap. Murat. Antiq. Ital. vol. iii. p. 399, &c. Hiſt. de Nic. Rienzy, par M. de Boiſpreaux, p. 91. &c.

were ſteady and invariable. Every new pontiff adopted the plan of his predeceſſor. By education and habit, eccleſiaſtics were ſo formed, that the character of the individual was ſunk in that of the profeſſion; and the paſſions of the man were ſacrificed to the intereſt and honour of the order. The hands which held the reins of adminiſtration might change; but the ſpirit which conducted them was always the ſame. While the meaſures of other governments fluctuated, and the objects at which they aimed varied, the church kept one end in view; and to this unrelaxing conſtancy of purſuit, it was indebted for its ſucceſs in the boldeſt attempts ever made by human ambition.

But in their civil adminiſtration, the popes followed no ſuch uniform or conſiſtent plan. There, as in other governments, the character, the paſſions, and the intereſt of the perſon who had the ſupreme direction of affairs, occaſioned a variation both in objects and meaſures. As few prelates reached the ſummit of eccleſiaſtical dignity until they were far advanced in life, a change of maſters were more frequent in the papal dominions than in other ſtates, and the political ſyſtem was, of courſe, leſs ſtable and permanent. Every pope was eager to make the moſt of the ſhort period, during which he had the proſpect of enjoying power, in order to aggrandize his own family, and to attain his private ends; and it was often the firſt buſineſs of his ſucceſſor to undo all that he had done, and to overturn what he had eſtabliſhed.

As eccleſiaſtics were trained to pacific arts, and early initiated in the myſteries of that policy by which the court of Rome extended or ſupported its ſpiritual dominion, the popes in the conduct of their temporal affairs were apt to follow the ſame maxims, and in all their meaſures were more ready to employ the refinements of intrigue, than the force of arms. It was in the papal court that addreſs and ſubtlety in negotiation became a ſcience; and during the

ſixteenth century, Rome was conſidered as the ſchool in which it might be beſt acquired.

As the decorum of their eccleſiaſtical character prevented the popes from placing themſelves at the head of their armies, or from taking the command in perſon of the military force in their dominions, they were afraid to arm their ſubjects; and in all their operations, whether offenſive or defenſive, they truſted entirely to mercenary troops.

As their power and dominions could not deſcend to their poſterity, the popes were leſs ſolicitous than other princes to form or to encourage ſchemes of public utility and improvement. Their tenure was only for a ſhort life; preſent advantage was what they chiefly ſtudied; to ſqueeze and to amaſs, rather than to meliorate, was their object. They erected perhaps, ſome work of oſtentation, to remain as a monument of their pontificate; they found it neceſſary at ſome times, to eſtabliſh uſeful inſtitutions, in order to ſoothe and ſilence the turbulent populace of Rome; but plans of general benefit to their ſubjects, framed with a view to futurity, were rarely objects of attention in the papal policy. The patrimony of St. Peter was worſe governed than any part of Europe; and though a generous pontiff might ſuſpend for a little, or counteract the effects of thoſe vices which are peculiar to the adminiſtration of eccleſiaſtics; the diſeaſe not only remained without remedy, but has gone on increaſing from age to age; and the decline of the ſtate has kept pace with its progreſs.

One circumſtance, farther, concerning the papal government, is ſo ſingular, as to merit attention. As the ſpiritual ſupremacy and temporal power were united in one perſon, and uniformly aided each other in their operations, they became ſo blended together, that it was difficult to ſeparate them, even in imagination. The potentates, who found it neceſſary to oppoſe the meaſures which the popes purſued as temporal princes, could not eaſily diveſt themſelves of the reverence which they imagined to be due to them as heads

of the church, and vicars of Jeſus Chriſt. It was with reluctance that they could be brought to a rupture with the head of the church; they were unwilling to puſh their operations againſt him to extremity; they liſtened eagerly to the firſt overtures of accommodation, and were anxious to procure it almoſt upon any terms. Their conſciouſneſs of this encouraged the enterpriſing pontiffs who filled the papal throne about the beginning of the ſixteenth century, to engage in ſchemes ſeemingly the moſt extravagant. They truſted, that if their temporal power was not ſufficient to carry them through with ſucceſs, the reſpect paid to their ſpiritual dignity would enable them to extricate themſelves with facility and with honour*. But when popes came to take part more frequently in the conteſts among princes, and to engage as principals or auxiliaries in every war kindled in Europe, this veneration for their ſacred character began to abate; and ſtriking inſtances will occur in the following hiſtory of its being almoſt totally extinct.

Of all the Italian powers, the republic of Venice, next to the papal ſee, was moſt connected with the reſt of Europe.

* The manner in which Louis XII. of France undertook and carried on war againſt Julius II. remarkably illuſtrates this obſervation. Louis ſolemnly conſulted the clergy of France, whether it was lawful to take arms againſt a pope who had wantonly kindled war in Europe, and whom neither the faith of treaties, nor gratitude for favours received, nor the decorum of his character, could reſtrain from the moſt violent actions to which the luſt of power prompts ambitious princes. Though his clergy authorized the war, yet Anne of Bretagne, his queen, entertained ſcruples with regard to the lawfulneſs of it. The king himſelf, from ſome ſuperſtition of the ſame kind, carried it on faintly; and, upon every freſh advantage, renewed his propoſitions of peace. Mezeray, Hiſt. de France, fol. edit. 1685. tom. i. 852. I ſhall produce another proof of this reverence for the papal character ſtill more ſtriking. Guicciardini, the moſt ſagacious, perhaps, of all modern hiſtorians, and the boldeſt in painting the vices and ambition of the popes, repreſents the death of Migliau, a Spaniſh officer, who was killed during the ſiege of Naples, as a puniſhment inflicted on him by heaven, on account of his having oppoſed the ſetting of Clement VII. at liberty. Guic. Hiſtoria d'Italia. Genev. 1645. vol. ii. lib. 18. p. 467.

The riſe of that commonwealth, during the inroads of the Huns in the fifth century; the ſingular ſituation of its capital in the ſmall iſles of the Adriatic gulf; and the more ſingular form of its civil conſtitution, are generally known. If we view the Venetian government as calculated for the order of nobles alone, its inſtitutions may be pronounced excellent; the deliberative, legiſlative, and executive powers, are ſo admirably diſtributed and adjuſted, that it muſt be regarded as a perfect model of political wiſdom. But if we conſider it as formed for a numerous body of people ſubject to its juriſdiction, it will appear a rigid and partial ariſtocracy, which lodges all power in the hands of a few members of the community, while it degrades and oppreſſes the reſt.

The ſpirit of government, in a commonwealth of this ſpecies, was, of courſe, timid and jealous. The Venetian nobles diſtruſted their own ſubjects, and were afraid of allowing them the uſe of arms. They encouraged among them the arts of induſtry and commerce; they employed them in manufactures and in navigation, but never admitted them into the troops which the ſtate kept in its pay. The military force of the republic conſiſted entirely of foreign mercenaries. The command of theſe was never truſted to noble Venetians, leſt they ſhould acquire ſuch influence over the army, as might endanger the public liberty; or become accuſtomed to the exerciſe of ſuch power, as would make them unwilling to return to the condition of private citizens. A ſoldier of fortune was placed at the head of the armies of the commonwealth; and to obtain that honour, was the great object of the Italian *Condottieri*, or leaders of bands, who, in the fifteenth and ſixteenth centuries, made a trade of war, and raiſed and hired out ſoldiers to different ſtates. But the ſame ſuſpicious policy, which induced the Venetians to employ theſe adventurers, prevented their placing entire confidence in them. Two noblemen, appointed by the ſenate, accompanied their army, when it took the field, with the ap-

pellation of *Proveditori*, and, like the field-deputies of the Dutch republic in latter times, obſerved all the motions of the general, and checked and controuled him in all his operations.

A commonwealth with ſuch civil and military inſtitutions, was not formed to make conqueſts. While its ſubjects were diſarmed, and its nobles excluded from military command, it carried on its warlike enterprizes with great diſadvantage. This ought to have taught the Venetians to reſt ſatisfied with making ſelf-preſervation, and the enjoyment of domeſtic ſecurity, the objects of their policy. But republics are apt to be ſeduced by the ſpirit of ambition, as well as kings. When the Venetians ſo far forgot the interior defects in their government as to aim at extenſive conqueſts, the fatal blow, which they received in the war excited by the league of Cambray, convinced them of the imprudence and danger of making violent efforts, in oppoſition to the genius and tendency of their conſtitution.

It is not, however, by its military, but by its naval and commercial power, that the importance of the Venetian commonwealth muſt be eſtimated. The latter conſtituted the real force and nerves of the ſtate. The jealouſy of government did not extend to this department. Nothing was apprehended from this quarter, that could prove formidable to liberty. The ſenate encouraged the nobles to trade, and to ſerve on board the fleet. They became merchants and admirals. They increaſed the wealth of their country by their induſtry. They added to its dominions, by the valour with which they conducted its naval armaments.

Commerce was an inexhauſtible ſource of opulence to the Venetians. All the nations in Europe depended upon them, not only for the commodities of the Eaſt, but for various manufactures fabricated by them alone, or finiſhed with a dexterity and elegance unknown in other countries. From this extenſive commerce, the ſtate derived ſuch immenſe ſupplies, as concealed thoſe vices in its conſtitution which I

have mentioned; and enabled it to keep on foot ſuch armies, as were not only an over-match for the force which any of its neighbours could bring into the field, but were ſufficient to contend, for ſome time, with the powerful monarchs beyond the Alps. During its ſtruggles with the princes united againſt it by the league of Cambray, the republic levied ſums which, even in the preſent age, would be deemed conſiderable; and while the king of France paid the exorbitant intereſt which I have mentioned for the money advanced to him, and the emperor, eager to borrow, but deſtitute of credit, was known by the name of *Maximilian the Money-leſs*, the Venetians raiſed whatever ſums they pleaſed, at the moderate premium of five in the hundred*.

The conſtitution of Florence was perfectly the reverſe of the Venetian. It partook as much of democratical turbulence and licentiouſneſs, as the other of ariſtocratical rigour. Florence, however, was a commercial, not a military democracy. The nature of its inſtitutions was favourable to commerce, and the genius of the people was turned towards it. The vaſt wealth which the family of Medici had acquired by trade, together with the magnificence, the generoſity, and the virtue of the firſt Coſmo, gave him ſuch an aſcendant over the affections as well as the councils of his countrymen, that though the forms of popular government were preſerved, though the various departments of adminiſtration were filled by magiſtrates diſtinguiſhed by the ancient names and elected in the uſual manner, he was in reality the head of the commonwealth; and in the ſtation of a private citizen, he poſſeſſed ſupreme authority. Coſmo tranſmitted a conſiderable degree of this power to his deſcendants; and during the greater part of the fifteenth century, the political ſtate of Florence was extremely ſingular. The appearance of republican government ſubſiſted, the people were paſſionately attached to it, and on ſome occaſions contend-

* Hiſt. de la Ligue fait a Cambray, par M. l'Abbe du Bos, lib. v. Sandi Storia Civil Veneziana, lib. viii. c. 16. p. 891, &c.

ed warmly for their privileges, and yet they permitted a ſingle family to aſſume the direction of their affairs, almoſt as abſolutely as if it had been formally inveſted with ſovereign power. The jealouſy of the Medici concurred with the commercial ſpirit of the Florentines, in putting the military force of the republic upon the ſame footing with that of the other Italian ſtates. The troops, which the Florentines employed in their wars, conſiſted almoſt entirely of mercenary ſoldiers, furniſhed by the *Condottieri*, or leaders of bands, whom they took into their pay.

In the kingdom of Naples, to which the ſovereignty of the iſland of Sicily was annexed, the feudal government was eſtabliſhed in the ſame form, and with the ſame defects, as in the other nations of Europe. The frequent and violent revolutions which happened in that monarchy had conſiderably increaſed theſe defects, and rendered them more intolerable. The ſucceſſion to the crown of Naples had been ſo often interrupted or altered, and ſo many princes of foreign blood had, at different periods, obtained poſſeſſion of the throne, that the Neapolitan nobility had loſt, in a great meaſure, that attachment to the family of their ſovereigns, as well as that reverence for their perſons, which, in other feudal kingdoms, contributed to ſet ſome bounds to the encroachments of the barons upon the royal prerogative and power. At the ſame time, the different pretenders to the crown, being obliged to court the barons who adhered to them, and on whoſe ſupport they depended for the ſucceſs of their claims, they augmented their privileges by liberal conceſſions, and connived at their boldeſt uſurpations. Even when ſeated on the throne, it was dangerous for a prince, who held his ſceptre by a diſputed title, to venture on any ſtep towards extending his own power, or circumſcribing that of the nobles.

From all theſe cauſes, the kingdom of Naples was the moſt turbulent of any in Europe, and the authority of its monarchs the leaſt extenſive. Though Ferdinand I. who

began his reign in the year 1468, attempted to break the power of the ariſtocracy; though his ſon Alphonſo, that he might cruſh it at once by cutting off the leaders of greateſt reputation and influence among the Neapolitan barons, ventured to commit one of the moſt perfidious and cruel actions recorded in hiſtory [A. D. 1487]; the order of nobles was nevertheleſs more exaſperated than humbled by their meaſures*. The reſentment which theſe outrages excited was ſo violent, and the power of the malcontent nobles was ſtill ſo formidable, that to theſe may be aſcribed, in a great degree, the eaſe and rapidity with which Charles VIII. conquered the kingdom of Naples†.

The event that gave riſe to the violent conteſts concerning the ſucceſſion to the crown of Naples and Sicily, which brought ſo many calamities upon theſe kingdoms, happened in the thirteenth century [A. D. 1254]. Upon the death of the emperor Frederick II. Manfred, his natural ſon, aſpiring to the Neapolitan throne, murdered his brother the emperor Conrad (if we may believe contemporary hiſtorians), and by that crime obtained poſſeſſion of it‡. The popes, from their implacable enmity to the houſe of Swabia, not only refuſed to recognize Manfred's title, but endeavoured to excite againſt him ſome rival capable of wreſting the ſceptre out of his hand. Charles, count of Anjou, the brother of St. Louis king of France, undertook this; and he received from the popes the inveſtiture of the kingdom of Naples and Sicily as a fief held of the holy ſee. The count of Anjou's efforts were crowned with ſucceſs; Manfred fell in battle; and he took poſſeſſion of the vacant throne. But ſoon after, Charles ſullied the glory which he had acquired, by the injuſtice and cruelty with which he put to death, by the hands of the executioner, Conradin, the laſt

* Giannone, book xxviii. chap. 2. vol. ii. p. 410, &c.
† Giannone, ib. p. 414.
‡ Struv. Corp. Hiſt. Germ. i. 481. Giannone, book xviii. chap. 5.

prince of the houſe of Swabia, and the rightful heir of the Neapolitan crown. That gallant young prince aſſerted his title, to the laſt, with a courage worthy of a better fate. On the ſcaffold, he declared Peter, at that time prince, and ſoon after king of Aragon, who had married Manfred's only daughter, his heir; and throwing his glove among the people, he entreated that it might be carried to Peter, as the ſymbol by which he conveyed all his rights to him†. The deſire of avenging the inſult offered to royalty, by the death of Conradin, concurred with his own ambition, in prompting Peter to take arms in ſupport of the title which he had acquired. From that period, during almoſt two centuries, the houſes of Aragon and Anjou contended for the crown of Naples. Amidſt a ſucceſſion of revolutions more rapid, as well as of crimes more atrocious, than what occur in the hiſtory of almoſt any other kingdom, monarchs, ſometimes of the Aragoneſe line, and ſometimes of the Angevin, were ſeated on the throne. At length the princes of the houſe of Aragon [A. D. 1434] obtained ſuch firm poſſeſſion of this long diſputed inheritance, that they tranſmitted it quietly to a baſtard branch of their family‡.

The race of the Angevin kings, however, was not extinct nor had they relinquiſhed their title to the Neapolitan crown. The count of Maine and Provence, the heir of this family, conveyed all his rights and pretenſions to Louis XI. and to his ſucceſſors [A. D. 1494]. Charles VIII. as I have already related, croſſed the Alps at the head of a powerful army, in order to proſecute his claim with a degree of vigour, far ſuperior to that which the princes from whom he derived it had been capable of exerting. The rapid progreſs of his arms in Italy, as well as the ſhort time during which he enjoyed the fruits of his ſucceſs, have already been mentioned, and are well known. Frederick, the heir of the illegitimate branch of the Aragoneſe family, ſoon recovered the throne

† Giannone, book xix. chap. 4. § 2.
‡ Giannone, book xxvi. ch. 2.

of which Charles had diſpoſſeſſed him. Louis XII. and Ferdinand of Aragon united againſt this prince, whom both, though for different reaſons, conſidered as an uſurper, and agreed to divide his dominions between them [A.D. 1501]. Frederick, unable to reſiſt the combined monarchs, each of whom was far his ſuperior in power, reſigned his ſceptre. Louis and Ferdinand, though they had concurred in making the conqueſt, differed about the diviſion of it; and from allies became enemies. But Gonſalvo de Cordova, partly by the exertion of ſuch military talents as gave him a juſt title to the appellation of the *Great Captain*, which the Spaniſh hiſtorians have beſtowed upon him; and partly by ſuch ſhameleſs and frequent violations of the moſt ſolemn engagements, as leave an indelible ſtain on his memory; ſtripped the French of all that they poſſeſſed in the Neapolitan dominions, and ſecured the peaceable poſſeſſion of them to his maſter. Theſe, together with his other kingdoms, Ferdinand tranſmitted to his grandſon Charles V. whoſe right to poſſeſs them, if not altogether uncontrovertible, ſeems, at leaſt, to be as well founded, as that which the kings of France ſet up in oppoſition to it†.

There is nothing in the political conſtitution, or interior government of the dutchy of Milan, ſo remarkable, as to require a particular explanation. But as the right of ſucceſſion to that fertile province was the cauſe or the pretext of almoſt all the wars carried on in Italy during the reign of Charles V. it is neceſſary to trace theſe diſputes to their ſource, and to inquire into the pretenſions of the various competitors.

During the long and fierce conteſts excited in Italy by the violence of the Guelf and Ghibelline factions, the family of Viſconti roſe to great eminence among their fellow-citizens of Milan. As the Viſconti had adhered uniformly to the Ghibelline or Imperial intereſt, they, by way of recompence,

† Droits des Rois de France au Royaume de Sicile. Mem. de Comin. Edit. de Freſnoy, tom. iv. part iv. p. 5.

received, from one emperor, the dignity of perpetual vicars of the empire in Italy† [A.D. 1354]: they were created, by another, dukes of Milan [A.D. 1395]; and, together with that title, the poſſeſſion of the city and its territories was beſtowed upon them as an hereditary fief‡. John, king of France, among other expedients for raiſing money, which the calamities of his reign obliged him to employ, condeſcended to give one of his daughters in marriage to John Galeazzo Viſconti, the firſt duke of Milan, from whom he had received conſiderable ſums. Valentine Viſconti, one of the children of this marriage, married her couſin, Louis, duke of Orleans, the only brother of Charles VI. In their marriage-contract, which the pope confirmed, it was ſtipulated that, upon failure of heirs male in the family of Viſconti, the dutchy of Milan ſhould deſcend to the poſterity of Valentine and the duke of Orleans. That event took place. In the year 1447, Philip Maria, the laſt prince of the ducal family of Viſconti, died. Various competitors claimed the ſucceſſion. Charles, duke of Orleans, pleaded his right to it, founded on the marriage-contract of his mother Valentine Viſconti. Alfonſo king of Naples claimed it in conſequence of a will made by Philip Maria in his favour. The emperor contended that, upon the extinction of male iſſue in the family of Viſconti, the fief returned to the ſuperior lord, and ought to be re-annexed to the empire. The people of Milan, ſmitten with the love of liberty which in that age prevailed among the Italian ſtates, declared againſt the dominion of any maſter, and eſtabliſhed a republican form of government.

But during the ſtruggle among ſo many competitors, the prize for which they contended was ſeized by one from whom none of them apprehended any danger. Francis Sforza, the natural ſon of Jacomuzzo Sforza, whom his courage and abilities had elevated from the rank of a pea-

† Petrarch. epiſt. ap. Struv. Corp. i. 625.
‡ Lebnit. Cod. Jur. Gent. Diplom. vol. i. 257.

ſant to be one of the moſt eminent and powerful of the Italian *Condottieri*, having ſucceeded his father in the command of the adventurers who followed his ſtandard, had married a natural daughter of the laſt duke of Milan. Upon this ſhadow of a title Francis founded his pretenſions to the dutchy, which he ſupported with ſuch talents and valour, as placed him at laſt on the ducal throne. The virtues, as well as abilities, with which he governed, inducing his ſubjects to forget the defects in his title, he tranſmitted his dominions quietly to his ſon; from whom they deſcended to his grandſon. He was murdered by his grand uncle Ludovico, ſurnamed the Moor, who took poſſeſſion of the dutchy; and his right to it was confirmed by the inveſtiture of the emperor Maximilian in the year 1494†.

Louis XI. who took pleaſure in depreſſing the princes of the blood, and who admired the political abilities of Francis Sforza, would not permit the duke of Orleans to take any ſtep in proſecution of his right to the dutchy of Milan. Ludovico the Moor kept up ſuch a cloſe connection with Charles VIII. that, during the greater part of his reign, the claim of the family of Orleans continued to lie dormant. But when the crown of France devolved on Louis XII. duke of Orleans, he inſtantly aſſerted the rights of his family with the ardour which it was natural to expect, and marched at the head of a powerful army to ſupport them. Ludovico Sforza, incapable of contending with ſuch a rival, was ſtripped of all his dominions in the ſpace of a few days. The king, clad in the ducal robes, entered Milan in triumph; and ſoon after, Ludovico, having been betrayed by the Swiſs in his pay, was ſent a priſoner into France, and ſhut up in the caſtle of Loches, where he lay unpitied during the remainder of his days. In conſequence of one of the ſingular revolutions which occur ſo frequently in the hiſtory of the Milaneſe, his ſon Maximilian Sforza was placed on the du-

† Ripalin. Hiſt. Mediol. lib. vi. 654. ap. Struv. Corp. i. 930. Du Mont Corps Diplom. tom. iii. p. ii. 333. ib.

cal throne, of which he kept poſſeſſion during the reign of Louis XII. [A.D. 1512.] But his ſucceſſor Francis I. was too high-ſpirited and enterpriſing tamely to relinquiſh his title. As ſoon as he was ſeated upon the throne, he prepared to invade the Milaneſe; and his right of ſucceſſion to it appears, from this detail, to have been more natural and more juſt than that of any other competitor.

It is unneceſſary to enter into any detail with reſpect to the form of government in Genoa, Parma, Modena, and the other inferior ſtates of Italy. Their names, indeed, will often occur in the following hiſtory. But the power of theſe ſtates themſelves was ſo inconſiderable, that their fate depended little upon their own efforts; and the frequent revolutions which they underwent, were brought about rather by the operations of the princes who atttacked or defended them, than by any thing peculiar in their internal conſtitution.

Of the great kingdoms on this ſide of the Alps, Spain is one of the moſt conſiderable; and as it was the hereditary domain of Charles V. as well as the chief ſource of his power and wealth, a diſtinct knowledge of its political conſtitution is of capital importance towards underſtanding the tranſactions of his reign.

The Vandals and Goths, who overturned the Roman power in Spain, eſtabliſhed a form of government in that country, and introduced cuſtoms and laws, perfectly ſimilar to thoſe which were eſtabliſhed in the reſt of Europe, by the other victorious tribes which acquired ſettlements there. For ſome time, ſociety advanced, among the new inhabitants of Spain, by the ſame ſteps, and ſeemed to hold the ſame courſe, as in other European nations. To this progreſs a ſudden ſtop was put by the invaſion of the Saracens or Moors from Africa [A.D. 712]. The Goths could not withſtand the efforts of their enthuſiaſtic valour, which ſubdued the greateſt part of Spain, with the ſame impetuous rapidity that diſtinguiſhes all the operations of their arms.

The conquerors introduced into the country in which they ſettled, the Mahometan religion, the Arabic language, the manners of the Eaſt, together with that taſte for the arts, and that love of elegance and ſplendour, which the caliphs had begun to cultivate among their ſubjects.

Such Gothic nobles as diſdained to ſubmit to the Mooriſh yoke, fled for refuge to the inacceſſible mountains of Aſturias. There they comforted themſelves with enjoying the exerciſe of the Chriſtian religion, and with maintaining the authority of their ancient laws. Being joined by many of the boldeſt and moſt warlike among their countrymen, they ſallied out upon the adjacent ſettlements of the Moors in ſmall parties; but venturing only upon ſhort excurſions at firſt, they were ſatisfied with plunder and revenge, without thinking of conqueſt. By degrees, their ſtrength increaſed, their views enlarged, a regular government was eſtabliſhed among them, and they began to aim at extending their territories. While they puſhed on their attacks with the unremitting ardour, excited by zeal for religion, by the deſire of vengeance, and by the hope of reſcuing their country from oppreſſion; while they conducted their operations with the courage natural to men who had no other occupation but war, and who were ſtrangers to all the arts which corrupt or enfeeble the mind; the Moors gradually loſt many of the advantages to which they had been indebted for their firſt ſucceſs. They threw off all dependence on the caliphs†; they neglected to preſerve a cloſe connection with their countrymen in Africa; their empire in Spain was ſplit into many ſmall kingdoms; the arts which they cultivated, together with the luxury to which theſe gave riſe, relaxed, in ſome meaſure, the force of their military inſtitutions, and abated the vigour of their warlike ſpirit. The Moors, however, continued ſtill to be a gallant people, and poſſeſſed great reſources. According to the magnificent ſtyle of the Spaniſh hiſtorians, eight centuries of almoſt uninterrupted

† Joſ. Sim. Aſſemanni Hiſtor. Ital. Scriptores, vol. iii. p. 135.

war elapſed, and three thouſand ſeven hundred battles were fought, before the laſt of the Mooriſh kingdoms in Spain ſubmitted to the Chriſtian arms [1492.]

As the Chriſtians made their conqueſts upon the Mahometans at various periods, and under different leaders, each formed the territory which he had wreſted from the common enemy, into an independent ſtate. Spain was divided into almoſt as many ſeparate kingdoms as it contained provinces; in each city of note, a petty monarch eſtabliſhed his throne, and aſſumed all the enſigns of royalty. In a ſeries of years, however, by the uſual events of intermarriages, or ſucceſſion, or conqueſt, all theſe inferior principalities were annexed to the more powerful kingdoms of Caſtile and of Aragon. At length, by the fortunate marriage of Ferdinand and Iſabella, the former the hereditary monarch of Aragon, and the latter raiſed to the throne of Caſtile by the affection of her ſubjects, [1481], all the Spaniſh crowns were united, and deſcended in the ſame line.

From this period, the political conſtitution of Spain began to aſſume a regular and uniform appearance; the genius of its government may be delineated, and the progreſs of its laws, and manners may be traced with certainty. Notwithſtanding the ſingular revolution which the invaſion of the Moors occaſioned in Spain, and the peculiarity of its fate, in being ſo long ſubject to the Mahometan yoke, the cuſtoms introduced by the Vandals and Goths had taken ſuch deep root, and were ſo thoroughly incorporated with the frame of its government, that in every province which the Chriſtians recovered from the Moors, we find the condition of individuals, as well as the political conſtitution, nearly the ſame as in other nations of Europe. Lands were held by the ſame tenure; juſtice was diſpenſed in the ſame form; the ſame privileges were claimed by the nobility; and the ſame power exerciſed by the Cortes, or general aſſembly of the kingdom. Several circumſtances contributed to ſecure this permanence of the feudal inſtitutions in Spain, notwithſtand-

ing the conqueſt of the Moors, which ſeemed to have overturned them. Such of the Spaniards, as preſerved their independence, adhered to their ancient cuſtoms, not only from attachment to them, but out of antipathy to the Moors, to whoſe ideas concerning property and government theſe cuſtoms were totally repugnant. Even among the Chriſtians, who ſubmitted to the Mooriſh conquerors, and conſented to become their ſubjects, ancient cuſtoms were not entirely aboliſhed. They were permitted to retain their religion, their laws concerning private property, their forms of adminiſtering juſtice, and their mode of levying taxes. The followers of Mahomet are the only enthuſiaſts who have united the ſpirit of toleration with zeal for making proſelytes, and who, at the ſame time that they took arms to propagate the doctrine of their Prophet, permitted ſuch as would not embrace it, to adhere to their own tenets, and to practiſe their own rites. To this peculiarity in the genius of the Mahometan religion, as well as to the deſire which the Moors had of reconciling the Chriſtians to their yoke, it was owing that the ancient manners and laws in Spain, ſurvived the violent ſhock of a conqueſt, and were permitted to ſubſiſt, notwithſtanding the introduction of a new religion and a new form of government into that country. It is obvious, from all theſe particulars, that the Chriſtians muſt have found it extremely eaſy to re-eſtabliſh manners and government on their ancient foundations, in thoſe of Spain which they wreſted ſucceſſively from the Moors. A conſiderable part of the people retained ſuch a fondneſs for the cuſtoms, and ſuch a reverence for the laws of their anceſtors, that, wiſhing to ſee them completely reſtored, they were not only willing but eager to reſume the former, and to recognize the authority of the latter.

But though the feudal form of government, with all the inſtitutions which characterize it, was thus preſerved entire in Caſtile and Aragon, as well as in all the kingdoms which depended on theſe crowns, there were certain peculiarities in

their political conſtitutions, which diſtinguiſh them from thoſe of any other country in Europe. The royal prerogative, extremely limited in every feudal kingdom, was circumſcribed, in Spain, within ſuch narrow bounds, as reduced the power of the ſovereign almoſt to nothing. The privileges of the nobility were great in proportion, and extended ſo far, as to border on abſolute independence. The immunities of the cities were likewiſe greater than in other feudal kingdoms, they poſſeſſed conſiderable influence in the Cortes, and they aſpired at obtaining more. Such a ſtate of ſociety, in which the political machine was ſo ill adjuſted, and the ſeveral members of the legiſlature ſo improperly balanced, produced internal diſorders in the kingdoms of Spain, which roſe beyond the pitch of turbulence and anarchy uſual under the feudal government. The whole tenor of the Spaniſh hiſtory confirms the truth of this obſervation; and when the mutinous ſpirit, to which the genius of their policy gave birth and vigour, was no longer reſtrained and overawed by the immediate dread of the Mooriſh arms, it broke out into more frequent inſurrections againſt the government of their princes, as well as more outrageous inſults on their dignity, than occur in the annals of any other country. Theſe were accompanied at ſome times with more liberal ſentiments concerning the rights of the people, at other times with more elevated notions concerning the privileges of the nobles, than were common in other nations.

In the principality of Catalonia, which was annexed to the kingdom of Aragon, the impatience of the people to obtain the redreſs of their grievances having prompted them to take arms againſt their ſovereign John II. [A. D. 1462], they, by a ſolemn deed, recalled the oath of allegiance which they had ſworn to him, declared him and his poſterity to be unworthy of the throne†, and endeavoured to eſtabliſh a republican form of government, in order to ſecure the perpe-

† Zurita Annales de Arag. tom. iv. 113, 115, &c.

tual enjoyment of that liberty, after which they aſpired*. Nearly about the ſame period, the indignation of the Caſtilian nobility againſt the weak and flagitious adminiſtration of Henry IV. having led them to combine againſt him, they arrogated, as one of the privileges belonging to their order, the right of trying and of paſſing ſentence on their ſovereign. That the exerciſe of this power might be as public and ſolemn, as the pretenſion to it was bold, they ſummoned all the nobility of their party to meet at Avila [A. D. 1465]; a ſpacious theatre was erected in a plain, without the walls of the town; an image, repreſenting the king, was ſeated on a throne, clad in royal robes, with a crown on its head, a ſceptre in its hand, and the ſword of juſtice by its ſide. The accuſation againſt the king was read, and the ſentence of depoſition was pronounced, in preſence of a numerous aſſembly. At the cloſe of the firſt article of the charge, the archbiſhop of Toledo advanced, and tore the crown from the head of the image; at the cloſe of the ſecond, the Conde de Placentia ſnatched the ſword of juſtice from its ſide; at the cloſe of the third, the Conde de Benevente wreſted the ſceptre from its hand; at the cloſe of the laſt, Don Diego Lopes de Stuniga tumbled it headlong from the throne. At the ſame inſtant, Don Alfonſo, Henry's brother, was proclaimed king of Caſtile and Leon in his ſtead†.

The moſt daring leaders of faction would not have ventured on theſe meaſures, nor have conducted them with ſuch public ceremony, if the ſentiments of the people concerning the royal dignity had not been ſo formed by the laws and policy to which they were accuſtomed both in Caſtile and Catalonia, as prepared them to approve of ſuch extraordinary proceedings, or to acquieſce in them.

* Ferreras Hiſt. d'Eſpagne, tom. vii. p. 92. P. Orleans Revol. d'Eſpagne, tom. iii. p. 155. L. Marinæus Siculus de Reb. Hiſpan. apud Schotti Script. Hiſpan. fol. 429.

† Marian. Hiſt. lib. xxiii. c. 9.

In Aragon, the form of government was monarchical, but the genius and maxims of it were purely republican. The kings who were long elective, retained only the ſhadow of power; the real exerciſe of it was in the Cortes or parliament of the kingdom. This ſupreme aſſembly was compoſed of four different *arms* or members. The nobility of the firſt rank. The equeſtrian order, or nobility of the ſecond claſs. The repreſentatives of the cities and towns whoſe right to a place in the Cortes, if we may give credit to the hiſtorians of Aragon, was coëval with the conſtitution. The eccleſiaſtical order, compoſed of the dignitaries of the church, together with the repreſentatives of the inferior clergy*. No law could paſs in this aſſembly without the aſſent of every ſingle member who had a right to vote†. Without the permiſſion of the Cortes, no tax could be impoſed; no war could be declared; no peace could be concluded; no money could be coined; nor could any alteration be made in the current ſpecie‡. The power of reviewing the proceedings of all inferior courts, the privilege of inſpecting every department of adminiſtration, and the right of redreſſing all grievances, belonged to the Cortes. Nor did thoſe who conceived themſelves to be aggrieved, addreſs the Cortes in the humble tone of ſuppliants, and petition for redreſs; they demanded it as the birthright of freemen, and required the guardians of their liberty to decide with reſpect to the points which they laid before them§. This ſovereign court was held during ſeveral centuries, every year; but, in conſequence of a regulation introduced about the beginning of the fourteenth century, it was convoked from that period only once in two years. After it was aſſembled, the king had no right to prorogue or diſſolve it without its own conſent; and the ſeſſion continued forty days¶.

* Forma de Celebrar. Cortes en Aragon. por Geron. Martel.
† Martel. ibid. p. 2.
‡ Hier. Blanca Comment. Rer. Aragon. ap. Schot. Script. Hiſpan. vol. iii. p. 750. § Martel. Forma de Celebr. p. 2.
¶ Hier. Blanca Comment. 763.

Not ſatisfied with having erected ſuch formidable barriers againſt the encroachments of the royal prerogative, nor willing to commit the ſole guardianſhip of their liberties entirely to the vigilance and authority of an aſſembly, ſimilar to the diets, ſtates-general, and parliaments, in which the other feudal nations have placed ſo much confidence, the Aragoneſe had recourſe to an inſtitution peculiar to themſelves, and elected a *Juſtiza* or ſupreme judge. This magiſtrate, whoſe office bore ſome reſemblance to that of the Ephori in ancient Sparta, acted as the protector of the people, and the comptroller of the prince. The perſon of the juſtiza was ſacred, his power and juriſdiction almoſt unbounded. He was the ſupreme interpreter of the laws. Not only inferior judges, but the kings themſelves, were bound to conſult him in every doubtful caſe, and to receive his reſponſes with implicit deference†. An appeal lay to him from the royal judges, as well as from thoſe appointed by the barons within their reſpective territories. Even when no appeal was made to him, he could interpoſe by his own authority, prohibit the ordinary judge to proceed, take immediate cognizance of the cauſe himſelf, and remove the party accuſed to the *Manifeſtation*, or priſon of the ſtate, to which no perſon had acceſs but by his permiſſion. His power was exerted with no leſs vigour and effect in ſuperintending the adminiſtration of government, than in regulating the courſe of juſtice. It was the prerogative of the juſtiza to inſpect he conduct of the king. He had a title to review all the royal proclamations and patents, and to declare whether or not they were agreeable to law, and ought to be carried into execution. He, by his ſole authority, could exclude any of the king's miniſters from the conduct of affairs, and call them to anſwer for their mal-adminiſtration. He himſelf was accountable to the Cortes only, for the manner in

† Blanca has preſerved two reſponſes of the juſtiza to James II. who reigned towards the cloſe of the thirteenth century. Blanca 748.

which he diſcharged the duties of this high office; and performed functions of the greateſt importance that could be committed to a ſubject [HH] *.

It is evident, from a bare enumeration of the privileges of the Aragoneſe Cortes, as well as of the rights belonging to the juſtiza, that a very ſmall portion of power remained in the hands of the king. The Aragoneſe ſeem to have been ſolicitous that their monarchs ſhould know and feel this ſtate of impotence, to which they were reduced. Even in ſwearing allegiance to their ſovereign, an act which ought naturally to be accompanied with profeſſions of ſubmiſſion and reſpect, they deviſed an oath, in ſuch a form, as to remind him of his dependence on his ſubjects. "We," ſaid the juſtiza, to the king in name of his high-ſpirited barons, "who are each of us as good, and who are all together more powerful than you, promiſe obedience to your government, if you maintain our rights and liberties; but if not, not." Conformably to this oath, they eſtabliſhed it as a fundamental article in their conſtitution, that if the king ſhould violate their rights and privileges, it was lawful for the people to diſclaim him as their ſovereign, and to elect another, even though a heathen, in his place †. The attachment of the Aragoneſe to this ſingular conſtitution of government was extreme, and their reſpect for it approached to ſuperſtitious veneration [II]. In the preamble to one of their laws, they declare, that ſuch was the barrenneſs of their country, and the poverty of the inhabitants, that, if it were not on account of the liberties by which they were diſtinguiſhed from other nations, the people would abandon it, and go in queſt of a ſettlement to ſome more fruitful region ¶.

In Caſtile there were not ſuch peculiarities in the form of government, as to eſtabliſh any remarkable diſtinction between it and that of the other European nations. The ex-

[HH] Note XXXI. * Hier. Blanca Comment. p. 747—755.
† Hier. Blanca Comment. 720. [II] Note XXXII.
¶ Hier. Blanca Com. p. 751.

ecutive part of government was committed to the king, but with a prerogative extremely limited. The legiſlative authority reſided in the Cortes, which was compoſed of the nobility, the dignified eccleſiaſtics, and the repreſentatives of the cities. The aſſembly of the Cortes in Caſtile was very ancient, and ſeems to have been almoſt coëval with the conſtitution. The members of the three different orders, who had a right of ſuffrage, met in one place, and deliberated as one collective body; the deciſions of which were regulated by the ſentiments of the majority. The right of impoſing taxes, of enacting laws, and of redreſſing grievances, belonged to this aſſembly; and in order to ſecure the aſſent of the king to ſuch ſtatutes and regulations as were deemed ſalutary or beneficial to the kingdom, it was uſual in the Cortes to take no ſtep towards granting money, until all buſineſs relative to the public welfare was concluded. The repreſentatives of cities ſeem to have obtained a ſeat very early in the Cortes of Caſtile, and ſoon acquired ſuch influence and credit, as were very uncommon, at a period when the ſplendour and pre-eminence of the nobility had eclipſed or depreſſed all other orders of men. The number of members from cities bore ſuch a proportion to that of the whole collective body, as rendered them extremely reſpectable in their Cortes [KK]. The degree of conſideration, which they poſſeſſed in the ſtate, may be eſtimated by one event. Upon the death of John I. [A. D. 1390] a council of regency was appointed to govern the kingdom during the minority of his ſon. It was compoſed of an equal number of noblemen, and of deputies choſen by the cities; the latter were admitted to the ſame rank, and inveſted with the ſame powers as prelates and grandees of the firſt order*. But though the members of communities in Caſtile were elevated above the condition wherein they were placed in other kingdoms of Europe; though they had attained to ſuch political importance, that even the proud and jealous ſpirit of

[KK] Note XXXIII. * Marian. Hiſt. lib. xviii. c. 15.

the feudal ariſtocracy could not exclude them from a conſiderable ſhare in government; yet the nobles, notwithſtanding theſe acquiſitions of the commons, continued to aſſert the privileges of their order, in oppoſition to the crown, in a tone extremely high. There was not any body of nobility in Europe more diſtinguiſhed for independence of ſpirit, haughtineſs of deportment, and bold pretenſions, than that of Caſtile. The hiſtory of that monarchy affords the moſt ſtriking examples of the vigilance with which they obſerved, and of the vigour with which they oppoſed, every meaſure of their kings, that tended to encroach on their juriſdiction, to diminiſh their dignity, or to abridge their power. Even in their ordinary intercourſe with their monarchs, they preſerved ſuch a conſciouſneſs of their rank, that the nobles of the firſt order claimed it as a privilege to be covered in the royal preſence, and approached their ſovereigns rather as equals than as ſubjects.

The conſtitutions of the ſubordinate monarchies, which depended on the crowns of Caſtile and Aragon, nearly reſembled thoſe of the kingdoms to which they were annexed. In all of them, the dignity and independence of the nobles were great; the immunities and power of the cities were conſiderable.

An attentive obſervation of the ſingular ſituation of Spain, as well as the various events which occurred there, from the invaſion of the Moors to the union of its kingdoms under Ferdinand and Iſabella, will diſcover the cauſes to which all the peculiarities in its political conſtitution I have pointed out, ought to be aſcribed.

As the provinces of Spain were wreſted from the Mahometans gradually and with difficulty, the nobles who followed the ſtandard of any eminent leader in theſe wars, conquered not for him alone, but for themſelves. They claimed a ſhare in the lands which their valour had won from the enemy, and their proſperity and power increaſed, in proportion as the territory of the prince extended.

During their perpetual wars with the Moors, the monarchs of the ſeveral kingdoms in Spain depended ſo much on their nobles, that it became neceſſary to conciliate their good-will by ſucceſſive grants of new honours and privileges. By the time that any prince could eſtabliſh his dominion in a conquered province, the greater part of the territory was parcelled out by him among his barons, with ſuch juriſdiction and immunities as raiſed them almoſt to ſovereign power.

At the ſame time, the kingdoms erected in ſo many different corners of Spain, were of inconſiderable extent. The petty monarch was but little elevated above his nobles. They, feeling themſelves to be almoſt his equals, acted as ſuch; and could not look up to the kings of ſuch limited domains with the ſame reverence that the ſovereigns of the great monarchies in Europe were viewed by their ſubjects [LL].

While theſe circumſtances concurred in exalting the nobility, and in depreſſing the royal authority, there were other cauſes which raiſed the cities in Spain to conſideration and power.

As the open country, during the wars with the Moors, was perpetually expoſed to the incurſions of the enemy, with whom no peace or truce was ſo permanent as to prove any laſting ſecurity, ſelf-preſervation obliged perſons of all ranks to fix their reſidence in places of ſtrength. The caſtles of the barons, which, in other countries, afforded a commodious retreat from the depredations of banditti, or from the tranſient violence of any interior commotion, were unable to reſiſt an enemy whoſe operations were conducted with regular and preſerving vigour. Cities, in which great numbers united for their mutual defence, were the only places in which people could reſide with any proſpect of ſafety. To this was owing the rapid growth of thoſe cities in Spain of which the Chriſtians recovered poſſeſſion. All who fled

[LL] Note XXXIV.

from the Mooriſh yoke reſorted to them, as to an aſylum; and in them, the greater part of thoſe who took the field againſt the Mahometans eſtabliſhed their families.

Several of thoſe cities, during a longer or ſhorter courſe of years, were the capitals of little ſtates, and enjoyed all the advantages which accelerate the increaſe of inhabitants in every place that is the ſeat of government.

From thoſe concurring cauſes, the number of cities in Spain, at the beginning of the fifteenth century, had become conſiderable, and they were peopled far beyond the proportion which was common in other parts of Europe, except in Italy and the Low-Countries. The Moors had introduced manufactures into thoſe cities, while under their dominion. The Chriſtians, who, by intermixture with them, had learned their arts, continued to cultivate theſe. Trade in ſeveral of the Spaniſh towns appears to have been carried on with vigour; and the ſpirit of commerce continued to preſerve the number of their inhabitants, as the ſenſe of danger had firſt induced them to crowd together.

As the Spaniſh cities were populous, many of the inhabitants were of a rank ſuperior to thoſe who reſided in towns in other countries of Europe. That cauſe, which contributed chiefly to their population, affected equally perſons of every condition, who flocked thither promiſcuouſly, in order to find ſhelter there, or in hopes of making a ſtand againſt the enemy, with greater advantage than in any other ſtation. The perſons elected as their repreſentatives in the Cortes by the cities, or promoted to offices of truſt and dignity in the government of the community, were often, as will appear from tranſactions which I ſhall hereafter relate, of ſuch conſiderable rank in the kingdom, as reflected luſtre on their conſtituents, and on the ſtations wherein they were placed.

As it was impoſſible to carry on a continual war againſt the Moors, without ſome other military force than that which the barons were obliged to bring into the field, in conſequence of the feudal tenures, it became neceſſary to

have ſome troops, particularly a body of light cavalry, in conſtant pay. It was one of the privileges of the nobles, that their lands were exempt from the burden of taxes. The charge of ſupporting the troops requiſite for the public ſafety, fell wholly upon the cities; and their kings, being obliged frequently to apply to them for aid, found it neceſſary to gain their favour by conceſſions, which not only extended their immunities, but added to their wealth and power.

When the influence of all theſe circumſtances, peculiar to Spain, is added to the general and common cauſes, which contributed to aggrandize cities in other countries of Europe, this will fully account for the extenſive privileges which they acquired, as well as for the extraordinary conſideration to which they attained, in all the Spaniſh kingdoms [MM].

By theſe exorbitant privileges of the nobility, and this unuſual power of the cities in Spain, the royal prerogative was hemmed in on every ſide, and reduced within very narrow bounds. Senſible of this, and impatient of ſuch reſtraint, ſeveral monarchs endeavoured at various junctures and by different means, to enlarge their own juriſdiction. Their power, however, or their abilities, were ſo unequal to the undertaking, that their efforts were attended with little ſucceſs. But when Ferdinand and Iſabella found themſelves at the head of the united kingdoms of Spain, and delivered from the danger and interruption of domeſtic wars, they were not only in a condition to reſume, but were not able to proſecute with advantage, the ſchemes of extending the prerogative, which their anceſtors had attempted in vain. Ferdinand's profound ſagacity in concerting his meaſures, his perſerving induſtry in conducting them, and his uncommon addreſs in carrying them into execution, fitted him admirably for an undertaking which required all theſe talents.

As the overgrown power and high pretenſions of the no-

[MM] Note XXXV.

bility were what the monarchs of Spain felt moſt ſenſibly, and bore with the greateſt impatience, the great object of Ferdinand's policy was to reduce theſe within more moderate bounds. Under various pretexts, ſome times by violence, more frequently in conſequence of decrees obtained in the courts of law, he wreſted from the barons a great part of the lands which had been granted to them by the inconſiderate bounty of former monarchs, particularly during the feeble and profuſe reign of his predeceſſor Henry IV. He did not give the entire conduct of affairs to perſons of noble birth, who were accuſtomed to occupy every department of importance in peace or in war, as if it had been a privilege peculiar to their order, to be employed as the ſole counſellors and miniſters of the crown He often tranſacted buſineſs of great conſequence without their intervention, and beſtowed many offices of power and truſt on new men, devoted to his intereſt*. He introduced a degree of ſtate and dignity into his court, which being little known in Spain, while it remained ſplit into many ſmall kingdoms, taught the nobles to approach their ſovereign with more ceremony, and gradually rendered him the object of greater deference and reſpect.

The annexing the maſterſhips of the three military orders of St. Jago, Calatrava, and Alcantara, to the crown, was another expedient, by which Ferdinand greatly augmented the revenue and power of the kings of Spain. Theſe orders were inſtituted in imitation of thoſe of the Knights Templars and of St. John of Jeruſalem, on purpoſe to wage perpetual war with the Mahometans, and to protect the pilgrims who viſited Compoſtella, or other places of eminent ſanctity in Spain. The zeal and ſuperſtition of the ages in which they were founded, prompted perſons of every rank to beſtow ſuch liberal donations on thoſe holy warriors, that, in a ſhort time, they engroſſed a conſiderable ſhare in the property and wealth of the kingdom. The maſterſhips of theſe

* Zurita Annales de Arag. tom. vi p. 22.

orders came to be ſtations of the greateſt power and opulence to which a Spaniſh nobleman could be advanced. Theſe high dignities were in the diſpoſal of the knights of the order, and placed the perſons on whom they conferred them almoſt on a level with their ſovereign [NN]. Ferdinand, unwilling that the nobility, whom he conſidered as already too formidable, ſhould derive ſuch additional credit and influence from poſſeſſing the government of theſe wealthy fraternities, was ſolicitous to wreſt it out of their hands, and to veſt it in the crown. His meaſures for accompliſhing this were wiſely planned, and executed with vigour‡ [A. D. 1476 and 1493]. By addreſſes, by promiſes, and by threats, he prevailed on the knights of each order to place Iſabella and him at the head of it. Innocent VIII. and Alexander VI. gave this election the ſanction of papal authority†; and ſubſequent pontiffs rendered the annexation of theſe maſterſhips to the crown perpetual.

While Ferdinand, by this meaſure, diminiſhed the power and influence of the nobility, and added new luſtre or authority to the crown, he was taking other important ſteps with a view to the ſame object. The ſovereign juriſdiction, which the feudal barons exerciſed within their own territories, was the pride and diſtinction of their order. To have invaded openly a privilege which they prized ſo highly, and in defence of which they would have run ſo eagerly to arms, was a meaſure too daring for a prince of Ferdinand's cautious temper. He took advantage, however, of an opportunity which the ſtate of his kingdoms and the ſpirit of his people preſented him, in order to undermine what he durſt not aſſault. The inceſſant depredations of the Moors, the want of diſcipline among the troops which were employed to oppoſe them, the frequent civil wars between the crown and

[NN] Note XXXVI.

‡ Marian. Hiſt. lib. xxv. c. 5.

† Zurita Annales, tom. v. p. 22. Ælii Anton. Nebriſſenſis rerum a Ferdinand & Elizabe geſtarum decades ii. apud Schot. ſcript. Hiſpan. i. 860.

the nobility, as well as the undiſcerning rage with which the barons carried on their private wars with each other, filled all the provinces of Spain with diſorder. Rapine, outrage, and murder became ſo common, as not only to interrupt commerce, but in a great meaſure to ſuſpend all intercourſe between one place and another. That ſecurity and protection, which men expect from entering into civil ſociety, ceaſed in a great degree. Internal order and police, while the feudal inſtitutions remained in vigour, were ſo little objects of attention, and the adminiſtration of juſtice was ſo extremely feeble, that it would have been vain to have expected relief from the eſtabliſhed laws or the ordinary judges. But the evil became ſo intolerable, and the inhabitants of cities, who were the chief ſufferers, grew ſo impatient of this anarchy, that ſelf-preſervation forced them to have recourſe to an extraordinary remedy. About the middle of the thirteenth century, the cities in the kingdom of Aragon, and after their example, thoſe in Caſtile, formed themſelves into an aſſociation, diſtinguiſhed by the name of the *Holy Brotherhood*. They exacted a certain contribution from each of the aſſociated towns; they levied a conſiderable body of troops, in order to protect travellers, and to purſue criminals; they appointed judges, who opened their courts in various parts of the kingdom. Whoever was guilty of murder, robbery, or of any act that violated the public peace, and was ſeized by the troops of the *Brotherhood*, was carried before judges of their nomination, who, without paying any regard to the excluſive and ſovereign juriſdiction, which the lord of the place might claim, tried and condemned the criminals. By the eſtabliſhment of this fraternity, the prompt and impartial adminiſtration of juſtice was reſtored; and, together with it, internal tranquillity and order began to return. The nobles alone murmured at this ſalutary inſtitution. They complained of it as an encroachment on one of their moſt valuable privileges. They remonſtrated againſt it in an high tone; and, on ſome occaſions, refuſed to grant any aid to the

crown, unleſs it were aboliſhed. Ferdinand, however, was ſenſible not only of the good effects of the Holy Brotherhood with reſpect to the police of his kingdoms, but perceived its tendency to abridge, and at length to annihilate, the territorial juriſdiction of the nobility. He countenanced it on every occaſion. He ſupported it with the whole force of royal authority; and beſides the expedients employed by him in common with the other monarchs of Europe, he availed himſelf of this inſtitution, which was peculiar to his kingdom, in order to limit and aboliſh that independent juriſdiction of the nobility, which was no leſs inconſiſtent with the authority of the prince, than with the order of ſociety [OO].

But though Ferdinand by theſe meaſures conſiderably enlarged the boundaries of prerogative, and acquired a degree of influence and power far beyond what any of his predeceſſors had enjoyed, yet the limitations of the royal authority, as well as the barriers againſt its encroachments, continued to be many and ſtrong. The ſpirit of liberty was vigorous among the people of Spain; the ſpirit of independence was high among the nobility; and though the love of glory, peculiar to the Spaniards in every period of their hiſtory, prompted them to ſupport Ferdinand with zeal in his foreign operations, and to afford him ſuch aid as enabled him not only to undertake but to execute great enterprizes; he reigned over his ſubjects with a juriſdiction leſs extenſive than that of any of the great monarchs in Europe. It will appear from many paſſages in the following hiſtory, that during a conſiderable part of the reign of his ſucceſſor Charles V. the prerogative of the Spaniſh crown was equally circumſcribed.

The ancient government and laws in France ſo nearly reſembled thoſe of the other feudal kingdoms, that ſuch a detail with reſpect to them as was neceſſary, in order to convey ſome idea of the nature and effects of the peculiar inſtitu-

[OO] Note XXXVII.

tions which took place in Spain, would be ſuperfluous. In the view which I have exhibited of the means by which the French monarchs acquired ſuch a full command of the national force of their kingdom, as enabled them to engage in extenſive ſchemes of foreign operation, I have already pointed out the great ſteps by which they advanced towards a more ample poſſeſſion of political power, and a more uncontrouled exerciſe of their royal prerogative. All that now remains is to take notice of ſuch particulars in the conſtitution of France, as ſerve either to diſtinguiſh it from that of other countries, or tend to throw any light on the tranſactions of that period, to which the following hiſtory extends.

Under the French monarchs of the firſt race, the royal prerogative was very inconſiderable. The general aſſemblies of the nation, which met annually at ſtated ſeaſons, extended their authority to every department of government. The power of electing kings, of enacting laws, of redreſſing grievances, of conferring donations on the prince, of paſſing judgment in the laſt reſort, with reſpect to every perſon and to every cauſe, reſided in this great convention of the nation. Under the ſecond race of kings, notwithſtanding the power and ſplendour which the conqueſts of Charlemagne added to the crown, the general aſſemblies of the nation continued to poſſeſs extenſive authority. The right of determining which of the royal family ſhould be placed on the throne, was veſted in them. The princes, elevated to that dignity by their ſuffrage, were accuſtomed regularly to call and to conſult them with reſpect to every affair of importance to the ſtate, and without their conſent no law was paſſed, and no new tax was levied.

But, by the time that Hugh Capet, the father of the third race of kings, took poſſeſſion of the throne of France, ſuch changes had happened in the political ſtate of the kingdom, as conſiderably affected the power and juriſdiction of the general aſſembly of the nation. The royal authority, in the hands of the degenerate poſterity of Charlemagne, had

dwindled into insignificance and contempt. Every considerable proprietor of land had formed his territory into a barony, almost independent of the sovereign. The dukes or governors of provinces, the counts or governors of towns and small districts, and the great officers of the crown, had rendered these dignities, which originally were granted only during pleasure or for life, hereditary in their families. Each of these had usurped all the rights which hitherto had been deemed the distinctions of royalty, particularly the privileges of dispensing justice within their own domains, of coining money, and of waging war. Every district was governed by local customs, acknowledged a distinct lord, and pursued a separate interest. The formality of doing homage to their sovereign, was almost the only act of subjection which those haughty barons would perform, and that bound them no farther than they were willing to acknowledge its obligation [PP].

In a kingdom broken into so many independent baronies, hardly any common principle of union remained; and the general assembly, in its deliberations, could scarcely consider the nation as forming one body, or establish common regulations to be of equal force in every part. Within the immediate domains of the crown, the king might publish laws, and they were obeyed, because there he was acknowledged as the only lord. But if he had aimed at rendering these laws general, that would have alarmed the barons as an encroachment upon the independence of their jurisdiction. The barons, when met in the great national convention, avoided, with no less care, the enacting of general laws to be observed in every part of the kingdom, because the execution of them must have been vested in the king, and would have enlarged that paramount power, which was the object of their jealousy. Thus, under the descendents of Hugh Capet, the States General (for that was the name by which the supreme assembly of the French nation came then to be distin-

[PP] Note XXXVIII.

guiſhed) loſt their legiſlative authority, or at leaſt entirely relinquiſhed the exerciſe of it. From that period, the juriſdiction of the States General extended no farther than to the impoſition of new taxes, the determination of queſtions with reſpect to the right of ſucceſſion to the crown, the ſettling of the regency when the preceding monarch had not fixed it by his will, and the preſenting remonſtrances enumerating the grievances of which the nation wiſhed to obtain redreſs.

As, during ſeveral centuries, the monarchs of Europe ſeldom demanded extraordinary ſubſidies of their ſubjects, and the other events, which required the interpoſition of the States, rarely occurred, their meetings in France were not frequent. They were ſummoned occaſionally by their kings, when compelled by their wants or their fears to have recourſe to the great convention of their people; but they did not, like the Diet in Germany, the Cortes in Spain, or the Parliament in England, form an eſſential member of the conſtitution, the regular exertion of whoſe powers was requiſite to give vigour and order to government.

When the ſtates of France ceaſed to exerciſe legiſlative authority, the kings began to aſſume it. They ventured at firſt on acts of legiſlation with great reſerve, and after taking every precaution that could prevent their ſubjects from being alarmed at the exerciſe of a new power. They did not at once iſſue their ordinances in a tone of authority and command. They treated with their ſubjects; they pointed out what was beſt; and allured them to comply with it. By degrees, however, as the prerogative of the crown extended, and as the ſupreme juriſdiction of the royal courts came to be eſtabliſhed, the kings of France aſſumed more openly the ſtyle and authority of lawgivers; and, before the beginning of the fifteenth century, the complete legiſlative power was veſted in the crown [QQ].

Having ſecured this important acquiſition, the ſteps which

[QQ] Note XXXIX.

led to the right of impoſing taxes were rendered few and eaſy. The people, accuſtomed to ſee their ſovereigns iſſue ordinances, by their ſole authority, which regulated points of the greateſt conſequence with reſpect to the property of their ſubjects, were not alarmed when they were required, by the royal edicts, to contribute certain ſums towards ſupplying the exigencies of government, and carrying forward the meaſures of the nation. When Charles VII. and Louis XI. firſt ventured to exerciſe this new power, in the manner which I have already deſcribed, the gradual increaſe of the royal authority had ſo imperceptibly prepared the minds of the people of France for this innovation, that it excited no commotion in the kingdom, and ſeems ſcarcely to have given riſe to any murmur or complaint.

When the kings of France had thus engroſſed every power which can be exerted in government; when the right of making laws, of levying money, of keeping an army of mercenaries in conſtant pay, of declaring war, and of concluding peace, centered in the crown, the conſtitution of the kingdom, which, under the firſt race of kings, was nearly democratical; which, under the ſecond race, became an ariſtocracy; terminated, under the third race, in a pure monarchy. Every thing that tended to preſerve the appearance or revive the memory, of the ancient mixed government, ſeems from that period to have been induſtriouſly avoided. During the long and active reign of Francis I. the variety as well as extent of whoſe operations obliged him to lay many heavy impoſitions on his ſubjects, the States General of France were not once aſſembled, nor were the people once allowed to exert the power of taxing themſelves, which, according to the original ideas of feudal government, was a right eſſential to every freeman.

Two things, however, remained, which moderated the exerciſe of the regal prerogative, and reſtrained it within ſuch bounds as preſerved the conſtitution of France from degenerating into mere deſpotiſm. The rights and privileges claimed by the nobility, muſt be conſidered as one

barrier againſt the abſolute dominion of the crown. Tho' the nobles of France had loſt that political power which was veſted in their order as a body, they ſtill retained the perſonal rights and pre-eminence which they derived from their rank. They preſerved a conſciouſneſs of elevation above other claſſes of citizens; an exemption from burdens to which perſons of inferior condition were ſubject; a contempt of the occupations in which they were engaged; the privilege of aſſuming enſigns that indicated their own dignity; a right to be treated with a certain degree of deference during peace; and a claim to various diſtinctions when in the field. Many of theſe pretenſions were not founded on the words of ſtatutes, or derived from poſitive laws; they were defined and aſcertained by the maxims of honour, a title more delicate, but no leſs ſacred. Theſe rights, eſtabliſhed and protected by a principle equally vigilant in guarding, and intrepid in defending them, are to the ſovereign himſelf objects of reſpect and veneration. Wherever they ſtand in its way, the royal prerogative is bounded. The violence of a deſpot may exterminate ſuch an order of men; but as long as it ſubſiſts, and its ideas of perſonal diſtinction remain entire, the power of the prince has limits*.

As in France the body of nobility was very numerous, and the individuals of which it was compoſed retained an high ſenſe of their own pre-eminence, to this we may aſcribe, in a great meaſure, the mode of exerciſing the royal prerogative which peculiarly diſtinguiſhes the government of that kingdom. An intermediate order was placed between the monarch and his other ſubjects; in every act of authority it became neceſſary to attend to its privileges, and not only to guard againſt any real violation of them, but to avoid any ſuſpicion of ſuppoſing it to be poſſible that they might be violated. Thus a ſpecies of government was eſtabliſhed in France unknown in the ancient world, that of a monarchy, in

*De l'Eſprit des Loix, liv. ii. c. 4. Dr. Ferguſon's Eſſay on the Hiſt. of Civil Society, part i. ſect. 10.

which the power of the ſovereign, though unconfined by any legal or conſtitutional reſtraint, has certain bounds ſet to it by the ideas which one claſs of his ſubjects entertain concerning their own dignity.

The juriſdiction of the parliaments in France, particularly that of Paris, was the other barrier which ſerved to confine the exerciſe of the royal prerogative within certain limits. The parliament of Paris was originally the court of the kings of France, to which they committed the ſupreme adminiſtration of juſtice within their own domains, as well as the power of deciding with reſpect to all caſes brought before it by appeals from the courts of the barons. When in conſequence of events and regulations which have been mentioned formerly, the time and place of its meeting were fixed, when not only the form of its procedure, but the principles on which it decided, were rendered regular and conſiſtent, when every cauſe of importance was finally determined there, and when the people became accuſtomed to reſort thither as to the ſupreme temple of juſtice, the parliament of Paris roſe to high eſtimation in the kingdom, its members acquired dignity, and its decrees were ſubmitted to with deference. Nor was this the only ſource of the power and influence which the parliament obtained. The kings of France, when they firſt began to aſſume the legiſlative power, in order to reconcile the minds of their people to this new exertion of prerogative, produced their edicts and ordinances in the parliament of Paris, that they might be approved of and regiſtered there, before they were publiſhed and declared to be of authority in the kingdom. During the intervals between the meetings of the States General of the kingdom, or during thoſe reigns in which the States General were not aſſembled, the monarchs of France were accuſtomed to conſult the parliament of Paris with reſpect to the moſt arduous affairs of government, and frequently regulated their conduct by its advice, in declaring war, in concluding peace, and in other tranſactions of public concern. Thus there

was erected in the kingdom a tribunal which became the great depoſitory of the laws, and by the uniform tenor of its decrees eſtabliſhed principles of juſtice and forms of proceeding which were conſidered as ſo ſacred, that even the ſovereign power of the monarch durſt not venture to diſregard or to violate them. The members of this illuſtrious body, though they neither poſſeſs legiſlative authority, nor can be conſidered as the repreſentatives of the people, have availed themſelves of the reputation and influence which they had acquired among their countrymen, in order to make a ſtand to the utmoſt of their ability, againſt every unprecedented and exorbitant exertion of the prerogative. In every period of the French hiſtory, they have merited the praiſe of being the virtuous but feeble guardians of the rights and privileges of the nation [RR]

After taking this view of the political ſtate of France, I proceed to conſider that of the German empire, from which Charles V. derived his title of higheſt dignity. In explaining the conſtitution of this great and complex body at the beginning of the ſixteenth century, I ſhall avoid entering into ſuch a detail as would involve my readers in that inextricable labyrinth, which is formed by the multiplicity of its tribunals, the number of its members, their interfering rights, and by the endleſs diſcuſſions or refinements of the public lawyers of Germany, with reſpect to all theſe.

The empire of Charlemagne was a ſtructure erected in ſo ſhort a time, that it could not be permanent. Under his immediate ſucceſſor it began to totter; and ſoon after fell to pieces. The crown of Germany was ſeparated from that of France, and the deſcendents of Charlemagne eſtabliſhed two great monarchies ſo ſituated as to give riſe to a perpetual rivalſhip and enmity between them. But the princes of the race of Charlemagne who were placed on the Imperial throne, were not altogether ſo degenerate, as thoſe of the ſame family who reigned in France. In the hands of the

[RR] Note XL.

former the royal authority retained ſome vigour, and the nobles of Germany, though poſſeſſed of extenſive privileges as well as ample territories, did not ſo early attain independence. The great offices of the crown continued to be at the diſpoſal of the ſovereign, and during a long period, fiefs remained in their original ſtate, without becoming hereditary and perpetual in the families of the perſons to whom they had been granted.

At length the German branch of the family of Charlemagne became extinct, and his feeble deſcendents who reigned in France had ſunk into ſuch contempt, that the Germans, without looking towards them, exerciſed the right inherent in a free people; and in a general aſſembly of the nation elected Conrad count of Franconia emperor [A.D. 911]. After him Henry of Saxony, and his deſcendents the three Othos, were placed, in ſucceſſion, on the Imperial throne, by the ſuffrages of their countrymen. The extenſive territories of the Saxon emperors, their eminent abilities and enterpriſing genius, not only added new vigour to the Imperial dignity, but raiſed it to higher power and pre-eminence. Otho the Great marched at the head of a numerous army into Italy [A.D. 952], and after the example of Charlemagne, gave law to that country. Every power there recognized his authority. He created popes, and depoſed them, by his ſovereign mandate. He annexed the kingdom of Italy to the German empire. Elated with his ſucceſs, he aſſumed the title of Cæſar Auguſtus. † A prince, born in the heart of Germany, pretended to be the ſucceſſor of the emperors of ancient Rome, and claimed a right to the ſame power and prerogative.

But while the emperors, by means of theſe new titles and new dominions, gradually acquired additional authority and ſplendour, the nobility of Germany had gone on at the ſame time extending their privileges and juriſdiction. The ſituation of affairs was favourable to their attempts. The vi-

† Annaliſta Saxo, &c. ap. Struv. Corp. vol. i. p. 246.

gour which Charlemagne had given to government quickly relaxed. The incapacity of ſome of his ſucceſſors was ſuch, as would have encouraged vaſſals leſs enterpriſing than the nobles of that age, to have claimed new rights, and to have aſſumed new powers. The civil wars in which other emperors were engaged, obliged them to pay perpetual court to their ſubjects, on whoſe ſupport they depended, and not only to connive at their uſurpations, but to permit, and even to authorize them. Fiefs gradually became hereditary. They were tranſmitted not only in the direct, but alſo in the collateral line. The inveſtiture of them was demanded not only by male but by female heirs. Every baron began to exerciſe ſovereign juriſdiction within his own domains; and the dukes and counts of Germany took wide ſteps towards rendering their territories diſtinct and independent ſtates†. The Saxon emperors obſerved their progreſs, and were aware of its tendency. But as they could not hope to humble vaſſals already grown too potent, unleſs they had turned their whole force as well as attention to that enterprize, and as they were extremely intent on their expeditions into Italy, which they could not undertake without the concurrence of their nobles, they were ſolicitous not to alarm them by any direct attack on their privileges and juriſdictions. They aimed, however, at undermining their power. With this view, they inconſiderately beſtowed additional territories, and accumulated new honours on the clergy, in hopes that this order might ſerve as a counterpoiſe to that of the nobility in any future ſtruggle*.

The unhappy effects of this fatal error in policy were quickly felt. Under the emperors of the Franconian and Swabian lines, whom the Germans, by their voluntary election, placed on the imperial throne, a new face of things appeared, and a ſcene was exhibited in Germany, which aſtoniſhed all Chriſtendom at that time [A.D. 1024], and in

† Pfeffel. Abrege, p. 120. 152. Lib. Feudor. tit. i.
* Pfeffel. Abrege, p. 154.

the preſent age appears almoſt incredible. The popes, hitherto dependent on the emperors, and indebted for power as well as dignity to their beneficence and protection, began to claim a ſuperior juriſdiction; and, in virtue of authority which they pretended to derive from heaven, tried, condemned, excommunicated, and depoſed their former maſters. Nor is this to be conſidered merely as a frantic ſally of paſſion in a pontiff intoxicated with high ideas concerning the extent of prieſtly domination, and the plenitude of papal authority. Gregory VII. was able as well as daring. His preſumption and violence were accompanied with political diſcernment and ſagacity. He had obſerved that the princes and nobles of Germany had acquired ſuch conſiderable territories and ſuch extenſive juriſdiction, as rendered them not only formidable to the emperors, but diſpoſed them to favour any attempt to circumſcribe their power. He foreſaw that the eccleſiaſtics of Germany, raiſed almoſt to a level with its princes, were ready to ſupport any perſon who would ſtand forth as the protector of their privileges and independence. With both of theſe Gregory negotiated, and had ſecured many devoted adherents among them, before he ventured to enter the liſts againſt the head of the empire.

He began his rupture with Henry IV. upon a pretext that was popular and plauſible. He complained of the venality and corruption with which the emperor had granted the inveſtiture of benefices to eccleſiaſtics. He contended that this right belonged to him as head of the church; he required Henry to confine himſelf within the bounds of his civil juriſdiction, and to abſtain for the future from ſuch ſacrilegious encroachments on the ſpiritual dominion. All the cenſures of the church were denounced againſt Henry, becauſe he refuſed to relinquiſh thoſe powers which his predeceſſors had uniformly exerciſed. The moſt conſiderable of the German princes and eccleſiaſtics were excited to take arms againſt him. His mother, his wife, his ſons were wrought upon to diſregard all the ties of blood as well as of

duty, and to join the party of his enemies‡. Such were the ſucceſsful arts with which the court of Rome inflamed the ſuperſtitious zeal, and conducted the factious ſpirit of the Germans and Italians, that an emperor, diſtinguiſhed not only for many virtues, but poſſeſſed of conſiderable talents, was at length obliged to appear as a ſuppliant at the gate of the caſtle in which the pope reſided, and to ſtand there, three days, bare-footed, in the depth of winter, imploring a pardon, which at length he obtained with difficulty [SS].

This act of humiliation degraded the Imperial dignity. Nor was the depreſſion momentary only. The conteſt between Gregory and Henry gave riſe to the two great factions of the Guelfs and Ghibellines; the former of which ſupporting the pretenſions of the popes, and the latter defending the rights of the emperor, kept Germany and Italy in perpetual agitation during three centuries. A regular ſyſtem for humbling the emperors and circumſcribing their power was formed, and adhered to uniformly throughout that period. The popes, the free ſtates in Italy, the nobility, and eccleſiaſtics of Germany, were all intereſted in its ſucceſs; and notwithſtanding the return of ſome ſhort intervals of vigour, under the adminiſtration of a few able emperors, the Imperial authority continued to decline. During the anarchy of the long interregnum ſubſequent to the death of William of Holland [A. D. 1256], it dwindled down almoſt to nothing. Rodulph of Hapſburgh, the founder of the Houſe of Auſtria, and who firſt opened the way to its future grandeur, was at length elected emperor [A. D. 1273], not that he might re-eſtabliſh and extend the Imperial authority, but becauſe his territories and influence were ſo inconſiderable as to excite no jealouſy in the German princes, who were willing to preſerve the forms of a conſtitution, the power and vigour of which they had deſtroyed. Several of his ſucceſſors were placed on the Imperial throne from the ſame motive; and almoſt every remaining prerogative was

‡ Annal. German. ap. Struv. i. p. 325. [SS] Note XLI.

reſcued out of the hands of feeble princes unable to exerciſe or to defend them.

During this period of turbulence and confuſion, the conſtitution of the Germanic body underwent a total change. The ancient names of courts and magiſtrates, together with the original forms and appearance of policy, were preſerved; but ſuch new privileges and juriſdiction were aſſumed, and ſo many various rights eſtabliſhed, that the ſame ſpecies of government no longer ſubſiſted. The princes, the great nobility, the dignified eccleſiaſtics, the free cities had taken advantage of the interregnum, which I have mentioned, to eſtabliſh or to extend their uſurpations. They claimed and exerciſed the right of governing their reſpective territories with full ſovereignty. They acknowledged no ſuperior with reſpect to any point, relative to the interior adminiſtration and police of their domains. They enacted laws, impoſed taxes, coined money, declared war, concluded peace, and exerted every prerogative peculiar to independent ſtates. The ideas of order and political union, which had originally formed the various provinces of Germany into one body, were almoſt entirely loſt; and the ſociety muſt have diſſolved, if the forms of feudal ſubordination had not preſerved ſuch an appearance of connection or dependence among the various members of the community, as preſerved it from falling to pieces.

This bond of union, however, was extremely feeble; and hardly any principle remained in the German conſtitution, of ſufficient force to maintain public order, or even to aſcertain perſonal ſecurity. From the acceſſion of Rodulph of Hapſburgh, to the reign of Maximilian, the immediate predeceſſor of Charles V. the empire felt every calamity which a ſtate muſt endure, when the authority of government is ſo much relaxed as to have loſt its proper degree of vigour. The cauſes of diſſenſion among that vaſt number of members, which compoſed the Germanic body, were infinite and unavoidable. Theſe gave riſe to perpetual private wars, which

were carried on with all the violence that uſually accompanies reſentment, when unreſtrained by ſuperior authority. Rapine, outrage, exactions, became univerſal. Commerce was interrupted; induſtry ſuſpended; and every part of Germany reſembled a country which an enemy had plundered and left deſolate*. The variety of expedients employed with a view to reſtore order and tranquillity, prove that the grievances occaſioned by this ſtate of anarchy had grown intolerable. Arbiters were appointed to terminate the differences among the ſeveral ſtates. The cities united in a league, the object of which was to check the rapine and extortions of the nobility. The nobility formed confederacies, on purpoſe to maintain tranquillity among their own order. Germany was divided into ſeveral circles, in each of which a provincial and partial juriſdiction was eſtabliſhed, to ſupply the place of a public and common tribunal†.

But all theſe remedies were ſo ineffectual, that they ſerved only to demonſtrate the violence of that anarchy which prevailed, and the inſufficiency of the means employed to correct it. At length Maximilian re-eſtabliſhed public order in the empire, by inſtituting the Imperial chamber [A. D. 1495], a tribunal compoſed of judges named partly by the emperor, partly by the ſeveral ſtates, and veſted with authority to decide finally concerning all differences among the members of the Germanic body. A few years after [A. D. 1512], by giving a new form to the Aulic council, which takes cognizance of all feudal cauſes, and ſuch as belong to the emperor's immediate juriſdiction, he reſtored ſome degree of vigour to the Imperial authority.

But notwithſtanding the ſalutary effects of theſe regulations and improvements, the political conſtitution of the German empire, at the commencement of the period of which I propoſe to write the hiſtory, was of a ſpecies ſo peculiar, as not

* See above, page 46, and Note xxi. Datt. de pace publica Imper. p. 25, no. 53. p. 28, no. 26, p. 35, no. 11.

† Datt. paſſim. Struv. Corp. Hiſt. i. 510, &c.

to reſemble perfectly any form of government known either in the ancient or modern world. It was a complex body, formed by the aſſociation of ſeveral ſtates, each of which poſſeſſed ſovereign and independent juriſdiction within its own territories. Of all the members which compoſed this united body, the emperor was the head. In his name, all decrees and regulations, with reſpect to points of common concern, were iſſued; and to him the power of carrying them into execution was committed. But this appearance of monarchical power in the emperor was more than counterbalanced by the influence of the princes and ſtates of the empire in every act of adminiſtration. No law extending to the whole body could paſs, no reſolution that affected the general intereſt could be taken, without the approbation of the diet of the empire. In this aſſembly, every ſovereign prince and ſtate of the Germanic body had a right to be preſent, to deliberate, and to vote. The decrees or *Receſſes* of the diet were the laws of the empire, which the emperor was bound to ratify and enforce.

Under this aſpect, the conſtitution of the empire appears a regular confederacy, ſimilar to the Achæan league in ancient Greece, or to that of the United Provinces and of the Swiſs Cantons in modern times. But if viewed in another light, ſtriking peculiarites in its political ſtate preſent themſelves. The Germanic body was not formed by the union of members altogether diſtinct and independent. All the princes and ſtates, joined in this aſſociation, were originally ſubject to the emperors, and acknowledged them as ſovereigns. Beſides this, they originally held their lands as Imperial fiefs, and in conſequence of this tenure owed the emperors all thoſe ſervices which feudal vaſſals are bound to perform to their liege lord. But though this political ſubjection was entirely at an end, and the influence of the feudal relation much diminiſhed, the ancient forms and inſtitutions, introduced while the emperors governed Germany with authority not inferior to that which the other mon-

archs of Europe poſſeſſed, ſtill remained. Thus an oppoſition was eſtabliſhed between the genius of the government, and the forms of adminiſtration in the German empire. The former conſidered the emperor only as the head of a confederacy, the members of which, by their voluntary choice, have raiſed him to that dignity; the latter ſeemed to imply, that he is really inveſted with ſovereign power. By this circumſtance, ſuch principles of hoſtility and diſcord were interwoven into the frame of the Germanic body, as affected each of its members, rendering their interior union incomplete, and their external efforts feeble and irregular. The pernicious influence of this defect inherent in the conſtitution of the empire is ſo conſiderable, that, without attending to it, we cannot fully comprehend many tranſactions in the reign of Charles V. or form juſt ideas concerning the genius of the German government.

The emperors of Germany, at the beginning of the ſixteenth century, were diſtinguiſhed by the moſt pompous titles, and by ſuch enſigns of dignity, as intimated their authority to be ſuperior to that of all other monarchs. The greateſt princes of the empire attended, and ſerved them, on ſome occaſions as the officers of their houſehold. They exerciſed prerogatives which no other ſovereign ever claimed. They retained pretenſions to all the extenſive powers which their predeceſſors had enjoyed in any former age. But, at the ſame time, inſtead of poſſeſſing that ample domain which had belonged to the ancient emperors of Germany, and which ſtretched from Baſil to Cologne, along both banks of the Rhine*, they were ſtripped of all territorial property, and had not a ſingle city, a ſingle caſtle, a ſingle foot of land, that belonged to them, as heads of the empire. As their domain was alienated, their ſtated revenues were reduced almoſt to nothing; and the extraordinary aids, which on a few occaſions they obtained, were granted ſparingly and paid with reluctance. The princes and ſtates of the empire,

* Pfeffel. Abrege, &c. p. 241.

though they ſeemed to recognize the Imperial authority, were ſubjects only in name, each of them poſſeſſing a complete municipal juriſdiction within the precincts of his own territories.

From this ill-compacted frame of government, effects that were unavoidable reſulted. The emperors, dazzled with the ſplendour of their titles, and the external ſigns of vaſt authority, were apt to imagine themſelves to be the real ſovereigns of Germany, and were led to aim continually at recovering the exerciſe of thoſe powers which the forms of the conſtitutiom ſeemed to veſt in them, and which their predeceſſors, Charlemagne and the Othos, had actually enjoyed. The princes and ſtates, aware of the nature as well as extent of theſe pretenſions, were perpetually on their guard, in order to watch all the motions of the Imperial court, and to circumſcribe its power within limits ſtill more narrow. The emperors, in ſupport of their claims, appealed to ancient forms and inſtitutions, which the ſtates held to be obſolete. The ſtates founded their rights on recent practice and modern privileges, which the emperors conſidered as uſurpations.

This jealouſy of the Imperial authority, together with the oppoſition between it and the rights of the ſtates, increaſed conſiderably from the time that the emperors were elected, not by the collective body of German nobles, but by a few princes of chief dignity. During a long period, all the members of the Germanic body had a right to aſſemble, and to make choice of the perſon whom they appointed to be their head. But amidſt the violence and anarchy which prevailed for ſeveral centuries in the empire, ſeven princes who poſſeſſed the moſt extenſive territories, and who had obtained a hereditary title to the great offices of the ſtate, acquired the excluſive privilege of nominating the emperor. This right was confirmed to them by the Golden Bull: the mode of exerciſing it was aſcertained, and they were dignified with the appellation of *Electors*. The nobi-

lity and free cities being thus ſtripped of a privilege which they had once enjoyed, were leſs connected with a prince, towards whoſe elevation they had not contributed by their ſuffrages, and came to be more apprehenſive of his authority. The electors, by their extenſive power, and the diſtinguiſhing privileges which they poſſeſſed, became formidable to the emperors, with whom they were placed almoſt on a level in ſeveral acts of juriſdiction. Thus the introduction of the electoral college into the empire, and the authority which it acquired, inſtead of diminiſhing, contributed to ſtrengthen, the principles of hoſtility and diſcord in the Germanic conſtitution.

Theſe were further augmented by the various and repugnant forms of civil policy in the ſeveral ſtates which compoſed the Germanic body. It is no eaſy matter to render the union of independent ſtates perfect and entire, even when the genius and forms of their reſpective governments happen to be altogether ſimilar. But in the Germanic empire, which was a confederacy of princes, of eccleſiaſtics, and of free cities, it was impoſſible that they could incorporate thoroughly. The free cities were ſmall republics, in which the maxims and ſpirit peculiar to that ſpecies of government prevailed. The princes and nobles, to whom ſupreme juriſdiction belonged, poſſeſſed a ſort of monarchical power within their own territories, and the forms of their interior adminiſtration nearly reſembled thoſe of the great feudal kingdoms. The intereſts, the ideas, the objects of ſtates ſo differently conſtituted, cannot be the ſame. Nor could their common deliberations be carried on with the ſame ſpirit, while the love of liberty, and attention to commerce, were the reigning principles in the cities; while the deſire of power, and ardour for military glory, were the governing paſſions of the princes and nobility.

The ſecular and eccleſiaſtical members of the empire were as little fitted for union as the free cities and the nobility. Conſiderable territories had been granted to ſeveral of the

biſhoprics and abbeys, and ſome of the higheſt offices in the empire having been annexed to them inalienably, were held by the eccleſiaſtics raiſed to theſe dignities. The younger ſons of noblemen of the ſecond order, who had devoted themſelves to the church, were commonly promoted to theſe ſtations of eminence and power; and it was no ſmall mortification to the princes and great nobility, to ſee perſons raiſed from an inferior rank to the ſame level with themſelves, or even exalted to ſuperior dignity. The education of theſe churchmen, the genius of their profeſſion, and their connection with the court of Rome, rendered their character as well as their intereſt different from thoſe of the other members of the Germanic body, with whom they were called to act in concert. Thus another ſource of jealouſy and variance was opened, which ought not to be overlooked when we are ſearching into the nature of the German conſtitution.

To all theſe cauſes of diſſenſion may be added one more, ariſing from the unequal diſtribution of power and wealth among the ſtates of the empire. The electors, and other nobles of the higheſt rank, not only poſſeſſed ſovereign juriſdiction, but governed ſuch extenſive, populous, and rich countries, as rendered them great princes. Many of the other members, though they enjoyed all the rights of ſovereignty, ruled over ſuch petty domains, that their real power bore no proportion to this high prerogative. A well compacted and vigorous confederacy could not be formed of ſuch diſſimilar ſtates. The weaker were jealous, timid, and unable either to aſſert or to defend their juſt privileges. The more powerful were apt to aſſume and to become oppreſſive. The electors, and emperors, by turns, endeavoured to extend their own authority, by encroaching on thoſe feeble members of the Germanic body, who ſometimes defended their rights with much ſpirit, but more frequently, being overawed or corrupted, they tamely ſurrendered their pri-

vileges, or meanly favoured the deſigns formed againſt them [TT].

After contemplating all theſe principles of diſunion and oppoſition in the conſtitution of the German empire, it will be eaſy to account for the want of concord and uniformity, conſpicuous in its councils and proceedings. That ſlow, dilatory, diſtruſtful, and irreſolute ſpirit, which characterizes all its deliberations, will appear natural in a body, the junction of whoſe members was ſo incomplete, the different parts of which were held together by ſuch feeble ties, and ſet at variance by ſuch powerful motives. But the empire of Germany, nevertheleſs, comprehended countries of ſuch great extent, and was inhabited by ſuch a martial and hardy race of men, that when the abilities of an emperor, or zeal for any common cauſe, could rouſe this unwieldy body to put forth its ſtrength, it acted with almoſt irreſiſtible force. In the following hiſtory we ſhall find, that as the meaſures on which Charles V. was moſt intent, were often thwarted or rendered abortive by the ſpirit of jealouſy and diviſion peculiar to the Germanic conſtitution; ſo it was by the influence which he acquired over the princes of the empire, and by engaging them to co-operate with him, that he was enabled to make ſome of the greateſt efforts which diſtinguiſh his reign.

The Turkiſh hiſtory is ſo blended, during the reign of Charles V. with that of the great nations in Europe, and the Ottoman Porte interpoſed ſo often, and with ſuch deciſive influence, in the wars and negotiations of the Chriſtian princes, that ſome previous account of the ſtate of government in that great empire, is no leſs neceſſary for the information of my readers, than thoſe views of the conſtitution of other kingdoms which I have already exhibited to them.

It has been the fate of the ſouthern and more fertile parts of Aſia, at different periods, to be conquered by that warlike and hardy race of men, who inhabit the vaſt country known

[TT] Note XLII.

to the ancients by the name of Scythia, and among the moderns by that of Tartary. One tribe of theſe people, called Turks or Turcomans, extended its conqueſts, under various leaders, and during ſeveral centuries, from the Caſpian Sea to the ſtraits of the Dardanelles. Towards the middle of the fifteenth century, theſe formidable conquerors took Conſtantinople by ſtorm, and eſtabliſhed the ſeat of their government in that imperial city. Greece, Moldavia, Walachia, and the other provinces of the ancient kingdoms of Thrace and Macedonia, together with part of Hungary, were ſubjected to their power.

But though the ſeat of the Turkiſh government was fixed in Europe, and the ſultans obtained poſſeſſion of ſuch extenſive dominions in that quarter of the globe, the genius of their policy continued to be purely Aſiatic; and may be properly termed a deſpotiſm, in contradiſtinction to thoſe monarchical and republican forms of government which we have been hitherto contemplating. The ſupreme power was veſted in ſultans of the Ottoman race, that blood being deemed ſo ſacred, that no other was thought worthy of the throne. From this elevation, theſe ſovereigns could look down and behold all their ſubjects reduced to the ſame level before them. The maxims of Turkiſh policy do not authoriſe any of thoſe inſtitutions, which in other countries, limit the exerciſe, or moderate the rigour of monarchical power; they admit neither of any great court with conſtitutional and permanent juriſdiction to interpoſe, both in enacting laws, and in ſuperintending the execution of them; nor of a body of hereditary nobles, whoſe ſenſe of their own pre-eminence, whoſe conſciouſneſs of what is due to their rank and character, whoſe jealouſy of their privileges circumſcribe the authority of the prince, and ſerve not only as a barrier againſt the exceſſes of his caprice, but ſtand as an intermediate order between him and the people. Under the Turkiſh government, the political condition of every ſubject is equal. To be employed in the ſervice of the ſul-

tan, is the only circumſtance that confers diſtinction. Even this diſtinction is rather official than perſonal, and ſo cloſely annexed to the ſtation in which any individual ſerves, that it is ſcarcely communicated to the perſons of thoſe who are placed in them. The higheſt dignity in the empire does not give any rank or pre-eminence to the family of him who enjoys it. As every man, before he is raiſed to any ſtation of authority, muſt go through the preparatory diſcipline of a long and ſervile obedience*, the moment he is deprived of power, he and his poſterity return to the ſame condition with other ſubjects, and ſink back into obſcurity. It is the diſtinguiſhing and odious characteriſtic of Eaſtern deſpotiſm that it annihilates all other ranks of men, in order to exalt the monarch; that it leaves nothing to the former, while it gives every thing to the latter; that it endeavours to fix in the minds of thoſe who are ſubject to it, the idea of no relation between men, but that of a maſter and of a ſlave, the former deſtined to command and to puniſh, the latter formed to tremble and to obey [UU].

But as there are circumſtances which frequently obſtruct or defeat the ſalutary effects of the beſt regulated governments, there are others which contribute to mitigate the evils of the moſt defective forms of policy. There can, indeed, be no conſtitutional reſtraints upon the will of a prince in a deſpotic government; but there may be ſuch as are accidental. Abſolute as the Turkiſh ſultans are, they feel themſelves circumſcribed both by religion, the principle on which their authority is founded†, and by the army, the inſtrument which they muſt employ in order to maintain it. Wherever religion interpoſes, the will of the ſovereign muſt ſubmit to its decrees. When the Koran hath preſcribed any religious rite, hath enjoined any moral duty, or hath confirmed by its ſanction any political maxim,

*State of the Turkiſh Empire by Rycaut, p. 25.
[UU] Note XLIII.
† Rycaut, p. 8.

the command of the ſultan cannot overturn that which an higher authority hath eſtabliſhed. The chief reſtriction, however, on the will of the ſultans, is impoſed by the military power. An armed force muſt ſurround the throne of every deſpot, to maintain his authority, and to execute his commands. As the Turks extended their empire over nations which they did not exterminate, but reduce to ſubjection, they found it neceſſary to render their military eſtabliſhment numerous and formidable. Amurath, their third ſultan, in order to form a body of troops devoted to his will, that might ſerve as the immediate guards of his perſon and dignity, commanded his officers to ſeize annually as the Imperial property, the fifth part of the youth taken in war [A. D. 1362]. Theſe after being inſtructed in the Mahometan religion, inured to obedience by ſevere diſcipline, and trained to warlike exerciſes, were formed into a body diſtinguiſhed by the name of *Janizaries*, or new ſoldiers. Every ſentiment which enthuſiaſm can inſpire, every mark of diſtinction that the favour of the prince could confer, were employed in order to animate this body with martial ardour, and with a conſciouſneſs of its own pre-eminence†. The Janizaries ſoon became the chief ſtrength and pride of the Ottoman armies; and, by their number as well as reputation, were diſtinguiſhed above all the troops whoſe duty it was to attend on the perſon of the ſultans [XX].

Thus as the ſupreme power in every ſociety is poſſeſſed by thoſe who have arms in their hands, this formidable body of ſoldiers, deſtined to be the inſtruments of enlarging the ſultan's authority, acquired at the ſame time, the means of controuling it. The Janizaries in Conſtantinople, like the Prætorian bands in ancient Rome, quickly perceived all the advantages which they derived from being ſtationed in the capital; from their union under one ſtandard; and from be-

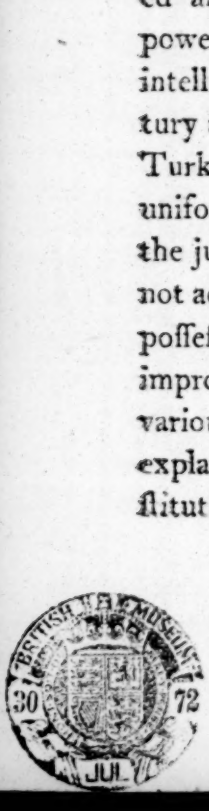
† Prince Cantemir's Hiſtory of the Othman Empire, p. 87.
[XX] Note XLIV.

ing maſters of the perſon of the prince. The ſultans became no leſs ſenſible of their influence and importance. The *Capiculy*, or ſoldiery of the Porte, was the only power in the empire that a ſultan or his viſier had reaſon to dread. To preſerve the fidelity and attachment of the Janizaries, was the great art of government, and the principal object of attention in the policy of the Ottoman court. Under a monarch, whoſe abilities and vigour of mind fit him for command, they are obſequious inſtruments; execute whatever he enjoins; and render his power irreſiſtible. Under feeble princes, or ſuch as are unfortunate, they become turbulent and mutinous; aſſume the tone of maſters; degrade and exalt ſultans at pleaſure; and teach thoſe to tremble, on whoſe nod, at other times, life and death depend.

From Mahomet II. who took Conſtantinople, to Solyman the Magnificent, who began his reign a few months after Charles V. was placed on the Imperial throne of Germany, a ſucceſſion of illuſtrious princes ruled over the Turkiſh empire. By their great abilities, they kept their ſubjects of every order, military as well as civil, ſubmiſſive to government; and had the abſolute command of whatever force their vaſt empire was able to exert. Solyman, in particular, who is known to the Chriſtians chiefly as a conqueror, but is celebrated in the Turkiſh annals, as the great lawgiver who eſtabliſhed order and police in their empire, governed, during his long reign, with no leſs authority than wiſdom. He divided his dominions into ſeveral diſtricts; he appointed the number of ſoldiers which each ſhould furniſh; he appropriated a certain proportion of the land in every province for their maintenance; he regulated, with a minute accuracy, every thing relative to their diſcipline, their arms, and the nature of their ſervice. He put the finances of the empire into an orderly train of adminiſtration; and, though the taxes in the Turkiſh dominions, as well as in the other deſpotic monarchies of the Eaſt, are far from being conſiderable, he ſupplied that defect by an attentive and ſevere economy.

Nor was it only under ſuch ſultans as Solyman, whoſe talents were no leſs adapted to preſerve internal order than to conduct the operations of war, that the Turkiſh empire engaged with advantage in its conteſts with the Chriſtian ſtates. The long ſucceſſion of able princes, which I have mentioned, had given ſuch vigour and firmneſs to the Ottoman government, that it ſeems to have attained, during the ſixteenth century, the higheſt degree of perfection of which its conſtitution was capable. Whereas the great monarchies in Chriſtendom were ſtill far from that ſtate, which could enable them to act with a full exertion of their force. Beſides this, the Turkiſh troops in that age poſſeſſed every advantage which ariſes from ſuperiority in military diſcipline. At the time when Solyman began his reign, the Janizaries had been embodied near a century and a half; and, during that long period, the ſeverity of their military diſcipline had in no degree relaxed. The other ſoldiers, drawn from the provinces of the empire, had been kept almoſt continually under arms, in the various wars which the ſultans had carried on, with hardly any interval of peace. Againſt troops thus trained and accuſtomed to ſervice, the forces of the Chriſtian powers took the field with great diſadvantage. The moſt intelligent as well as impartial authors of the ſixteenth century acknowledge and lament the ſuperior attainments of the Turks in the military art [YY]. The ſucceſs which almoſt uniformly attended their arms, in all their wars, demonſtrates the juſtneſs of this obſervation. The Chriſtian armies did not acquire that ſuperiority over the Turks, which they now poſſeſs, until the long eſtabliſhment of ſtanding forces had improved military diſcipline among the former; and until various cauſes and events, which it is not my province to explain, had corrupted or aboliſhed their ancient warlike inſtitutions among the latter.

[YY] Note XLV.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# PROOFS AND ILLUSTRATIONS.

## NOTE I. Sect. I. p. 10. [A].

THE conſternation of the Britons, when invaded by the Picts and Caledonians after the Roman legions were called out of the iſland, may give ſome idea of the degree of debaſement to which the human mind was reduced by long ſervitude under the Romans. In their ſupplicatory letter to Aetius, which they call the *Groans of Britain*, "We know not (ſay they) which way to turn us. The barbarians drive us to the ſea, and the ſea forces us back on the barbarians; between which we have only the choice of two deaths, either to be ſwallowed up by the waves, or to be ſlain by the ſword." Hiſtor. Gildæ, ap. Gale, Hiſt. Britain. Script. p. 6.—One can hardly believe this daſtardly race to be the deſcendents of that gallant people, who repulſed Cæſar, and defended their liberty ſo long againſt the Roman arms.

## NOTE II. Sect. I. p 10. [B].

The barbarous nations were not only illiterate, but regarded literature with contempt. They found the inhabitants of all the provinces of the empire ſunk in effeminacy, and averſe to war. Such a character was the object of ſcorn to an high ſpirited and gallant race of men. When we would brand an enemy, ſays Liutprandus, "with the moſt diſgraceful and contumelious appellation, we call him a Roman; hoc ſolo, id eſt *Romani* nomine, quicquid ignobilitatis, quicquid timiditatis, quicquid avaritiæ, quicquid luxuriæ, quicquid mendacii, immo quicquid vitiorum eſt comprehendentes." Liutprandi Legatio apud Murat. Scriptor. Italic. vol. ii. pars 1. p. 481. This degeneracy of manners, illiterate barbarians imputed to their love of learning. Even after they ſettled in the countries which they had conquered, they would not permit their children to be inſtructed in any ſcience; "for (ſaid they) inſtruction in the ſciences tends to corrupt, enervate and depreſs the mind; and he who has been accuſtomed to tremble under the rod of a pedagogue, will never look on a ſword or ſpear with an undaunted eye." Procop. de bello Gothor. lib. i. p. 4. ap. Scrip. Byz. edit. Vennet. vol. i. A conſiderable number of years elapſed, before nations ſo rude, and ſo unwilling to learn, could produce hiſtorians capable of recording their tranſactions, or of deſcribing their manners and inſtitutions. By that time, the memory of their ancient condition was in a great meaſure loſt, and few monuments remained to guide their firſt writers to any certain knowlege of it. If one expects to receive any ſatisfactory account of the manners and laws of the Goths, Lombards, or Franks, during their reſidence in thoſe countries where they were

originally ſeated, from Jornandes, Paulus Warnefridus, or Gregory of Tours, the earlieſt and moſt authentic hiſtorians of theſe people, he will be miſerably diſappointed. Whatever imperfect knowledge has been conveyed to us of their ancient ſtate, we owe not to their own writers, but to the Greek and Roman hiſtorians.

NOTE III. Sect. I. p. 11. [C]

A circumſtance, related by Priſcus in his hiſtory of the embaſſy to Attila, king of the Huns, gives a ſtriking view of the enthuſiaſtic paſſion for war which prevailed among the barbarous nations. When the entertainment, to which that fierce conqueror admitted the Roman ambaſſadors, was ended, two Scythians advanced towards Attila, and recited a poem in which they celebrated his victories and military virtues. All the Huns fixed their eyes with attention on the bards. Some ſeemed to be delighted with the verſes; others, remembering their own battles and exploits, exulted with joy; while ſuch as were become feeble through age, burſt into tears, bewailing the decay of their vigour, and the ſtate of inactivity in which they were now obliged to remain. Excerpta ex hiſtoria Priſci Rhetoris ap. Byzant. Hiſtor. Script. vol. i. p. 45.

NOTE IV. Sect. I. p. 16. [D]

A remarkable confirmation of both parts of this reaſoning occurs in the hiſtory of England. The Saxons carried on the conqueſt of that country, with the ſame deſtructive ſpirit which diſtinguiſhed the other barbarous nations. The ancient inhabitants of Britain were either exterminated, or forced to take ſhelter among the mountains of Wales, or reduced to ſervitude. The Saxon government, laws, manners and language were of conſequence introduced into Britain; and were ſo perfectly eſtabliſhed, that all memory of the inſtitutions previous to their conqueſt of the country, was in a great meaſure loſt. The very reverſe of this happened in a ſubſequent revolution. A ſingle victory placed William the Norman on the throne of England. The Saxon inhabitants, though oppreſſed, were not exterminated. William employed the utmoſt efforts of his power and policy to make his new ſubjects conform in every thing to the Norman ſtandard, but without ſucceſs. The Saxons, though vanquiſhed, were far more numerous than their conquerors; when the two races began to incorporate, the Saxon laws and manners gradually gained ground. The Norman inſtitutions became unpopular and odious; many of them fell into diſuſe, and in the Engliſh conſtitution and language, at this day, many eſſential parts are manifeſtly of Saxon, not of Norman extraction.

Note V. Sect. I. p. 16. [E].

Procopius, the hiſtorian, declines, from a principle of benevolence, to give any particular detail of the cruelties of the Goths: "Leſt," ſays he, "I ſhould tranſmit a monument and example

of inhumanity to ſucceeding ages." Proc. de bello Goth. lib. iii. cap. 10. ap. Byz. Script. vol. i. 126. But as the change, which I have pointed out as a conſequence of the ſettlement of the barbarous nations in the countries formerly ſubject to the Roman empire, could not have taken place, if the greater part of the ancient inhabitants had not been extirpated, an event of ſuch importance and influence merits a more particular illuſtration. This will juſtify me for exhibiting ſome part of that melancholy ſpectacle, over which humanity prompted Procopius to draw a veil. I ſhall not, however, diſguſt my readers by a minute narration; but reſt ſatisfied with collecting ſome inſtances of the devaſtations made by two of the many nations which ſettled in the empire. The Vandals were the firſt of the babarians who invaded Spain. It was one of the richeſt and moſt populous of the Roman provinces; the inhabitants had been diſtinguiſhed for courage, and had defended their liberty againſt the arms of Rome, with great obſtinacy, and during a longer courſe of years, than any nation in Europe. But ſo entirely were they enervated by their ſubjection to the Romans, that the Vandals, who entered the kingdom, A. D. 409, completed the conqueſt of it with ſuch rapidity, that in the year 411, theſe barbarians divided it among them by caſting lots. The deſolation occaſioned by their invaſion, is thus deſcribed by Idatius an eye witneſs: "The barbarians waſted every thing with hoſtile cruelty. The peſtilence was no leſs deſtructive. A dreadful famine raged, to ſuch a degree, that the living were conſtrained to feed on the dead bodies of their fellow-citizens; and all thoſe terrible plagues deſolated at once the unhappy kingdoms." Idatii Chron. ap. Biblioth. Patrum, vol. vii. p. 1233. edit. Ludg. 1677. The Goths having attacked the Vandals in their new ſettlements, a fierce war enſued; the country was plundered by both parties; the cities which had eſcaped from deſtruction in the firſt invaſion of the Vandals, were now laid in aſhes, and the inhabitants expoſed to ſuffer every thing that the wanton cruelty of barbarians could inflict. Idatius deſcribes theſe ſcenes of inhumanity, ibid. p. 1235. b. 1236. c. f. A ſimilar account of their devaſtation is given by Iſidorus Hiſpalenſis, and other contemporary writers. Iſid. Chron. ap. Grot. hiſt. Goth. 732. From Spain the Vandals paſſed over into Africa, A. D. 428. Africa was, next to Egypt, the moſt fertile of the Roman provinces. It was one of the granaries of the empire, and is called by an ancient writer the ſoul of the commonwealth. Though the army with which the Vandals invaded it did not exceed 30,000 fighting men, they became abſolute maſters of the province in leſs than two years. A contemporary author gives a dreadful account of the havock which they made: "They found a province well cultivated, and enjoying plenty, the beauty of the whole earth. They carried their deſtructive arms into every corner of it; they diſpeopled it by their devaſtations; exterminating every thing with fire and ſword. They did not even ſpare the vines and fruit trees, that thoſe, to whom caves and inacceſſible mountains had afforded a retreat, might find no nouriſhment of any kind. Their

hoſtile rage could not be ſatiated, and there was no place exempted from the effects of it. They tortured their priſoners with the moſt exquiſite cruelty, that they might force from them a diſcovery of their hidden treaſures. The more they diſcovered the more they expected, and the more implacable they became. Neither the infirmities of age nor of ſex; neither the dignity of nobility, nor the ſanctity of the ſacerdotal office, could mitigate their fury; but the more illuſtrious their priſoners were, the more barbarouſly they inſulted them. The public buildings which reſiſted the violence of the flames, they levelled with the ground. They left many cities without an inhabitant. When they approached any fortified place, which their undiſciplined army could not reduce, they gathered together a multitude of priſoners, and putting them to the ſword, left their bodies unburied, that the ſtench of the carcaſſes might oblige the garriſon to abandon it." Victor Vitenſis de perſecutione Africana, ap Bibl. Patrum, vol. viii. p. 666. St. Auguſtin, an African, who ſurvived the conqueſt of his country by the Vandals ſome years, gives a ſimilar deſcription of their cruelties, Opera, vol. x. p. 372. edit. 1616.—About an hundred years after the ſettlement of the Vandals in Africa, Belliſarius attacked and diſpoſſeſſed them. Procopius, a contemporary hiſtorian deſcribes the devaſtation which that war occaſioned. "Africa," ſays he, "was ſo entirely diſpeopled that one might travel ſeveral days in it without meeting one man; and it is no exaggeration to ſay, that in the courſe of the war five millions of perſons periſhed!" Proc hiſt. Arcana, cap. 18. ap. Byz Script. vol. i. 315.—I have dwelt longer upon the calamities of this province, becauſe they are deſcribed not only by contemporary authors, but by eye-witneſſes. The preſent ſtate of Africa confirms their teſtimony. Many of the moſt flouriſhing and popul ſ cities with which it was filled, were ſo entirely ruined, that no veſtiges remain to point out where they were ſituated. That fertile territory which ſuſtained the Roman empire, ſtill lies in a great meaſure uncultivated; and that province, which Victor, in his barbarous Latin, called *Speciоſitas totius terræ florentis*, is now the retreat of pirates and banditti.

While the Vandals laid waſte a great part of the empire, the Huns deſolated the remainder. Of all the barbarous tribes they were the fierceſt and moſt formidable. Ammianus Marcellinus, a contemporary author, and one of the beſt of the later hiſtorians, gives an account of their policy and manners; which nearly reſembled thoſe of the Scythians deſcribed by the ancients, and of the Tartars known to the moderns. Some parts of their character, and ſeveral of their cuſtoms are not unlike thoſe of the Savages in North America. Their paſſion for war was extreme. "As in poliſhed ſocieties (ſays Ammianus) eaſe and tranquillity are courted, they delight in war and dangers. He who falls in battle is reckoned happy. They who die of old age or of diſeaſe are deemed infamous. They boaſt, with the utmoſt exultation, of the number of enemies whom they have ſlain, and, as the moſt glorious of all ornaments, they faſten the ſcalps of thoſe who have

fallen by their hands to the trappings of their horſes." Ammian. Marc. lib xxxi. p. 477. edit. Gronov. Lugd. 1693.—Their incurſions into the empire began in the fourth century; and the Romans, though no ſtrangers, by that time, to the effects of barbarous rage, were aſtoniſhed at the cruelty of their devaſtations. Thrace, Pannonia, and Illyricum, were the countries which they firſt laid deſolate. As they had at firſt no intention of ſettling in Europe, they made only inroads of ſhort continuance into the empire, but theſe were frequent, and Procopius computes that in each of theſe, at a medium, two hundred thouſand perſons periſhed, or were carried off as ſlaves. Procop. Hiſt. Arcan. ap. Byz. Script. vol. i. 316. Thrace, the beſt cultivated province in that quarter of the empire, was converted into a deſert, and, when Priſcus accompanied the ambaſſadors ſent to Attila, there were no inhabitants in ſome of the cities but a few miſerable people who had taken ſhelter among the ruins of the churches; and the fields were covered with the bones of thoſe who had fallen by the ſword. Priſcus ap. Byz. Script. vol. i. 34. Attila became king of the Huns, A. D. 434. He is one of the greateſt and moſt enterpriſing conquerors mentioned in hiſtory. He extended his empire over all the vaſt countries comprehended under the general names of Scythia and Germany in the ancient diviſion of the world. While he was carrying on his wars againſt the barbarous nations, he kept the Roman empire under perpetual apprehenſions, and extorted enormous ſubſidies from the timid and effeminate monarchs who governed it. In the year 451, he entered Gaul, at the head of an army compoſed of all the various nations which he had ſubdued. It was more numerous than any with which the barbarians had hitherto invaded the empire. The devaſtations which he committed were horrible; not only the open country, but the moſt flouriſhing cities, were deſolated. The extent and cruelty of his devaſtations are deſcribed by Salvianus de Gubernat. Dei, edit. Baluz. Par. 1669. p. 139, &c. and by Idatius, ubi ſupra, p. 1235. Aetius put a ſtop to his progreſs in that country by the famous battle of Chalons, in which (if we may believe the hiſtorians of that age) three hundred thouſand perſons periſhed. Idat. ibid. Jornandes de Rebus Geticis ap. Grot. Hiſt. Gothor. p. 671. Amſt. 1665. But the next year he reſolved to attack the centre of the empire, and marching into Italy, waſted it with rage, inflamed by the ſenſe of his late diſgrace. What Italy ſuffered by the Huns, exceeded all the calamities which the preceding of the barbarians had brought upon it. Conringius, has collected ſeveral paſſages from the ancient hiſtorians, which prove that the devaſtations committed by the Vandals and Huns in the countries ſituated on the banks of the Rhine, were no leſs cruel and fatal to the human race. Exercitatio de urbibus Germaniæ, Opera, vol. i. 488. It is endleſs, it is ſhocking, to follow theſe deſtroyers of mankind through ſo many ſcenes of horror, and to contemplate the havock which they made of the human ſpecies

But the ſtate in which Italy appears to have been, during ſeve-

ral ages after the barbarous nations ſettled in it, is the moſt deciſive proof of the cruelty as well as extent of their devaſtations. Whenever any country is thinly inhabited, trees and ſhrubs ſpring up in the uncultivated fields, and ſpreading by degrees, form large foreſts; by the overflowing of rivers, and the ſtagnating of waters, other parts of it are converted into lakes and marſhes. Ancient Italy, which the Romans rendered the ſeat of elegance and luxury, was cultivated to the higheſt pitch. But ſo effectually did the devaſtations of the barbarians deſtroy all the effects of Roman induſtry and cultivation, that in the eighth century a conſiderable part of Italy appears to have been covered with foreſts and marſhes of great extent. Muratori enters into a minute detail concerning the ſituation and limits of ſeveral of theſe; and proves by the moſt authentic evidence, that great tracts of territory, in all the different provinces of Italy, were either overrun with wood, or laid under water. Nor did theſe occupy parts of the country naturally barren or of little value, but were ſpread over diſtricts which ancient writers repreſent as extremely fertile, and which at preſent are highly cultivated. Muratori Antiquitates Italicæ medii ævi, diſſert. xxi. v. ii. p. 149, 153, &c. A ſtrong proof of this occurs in a deſcription of the city of Modena, by an author of the tenth century. Murat. Script. Rerum Italic. vol. ii. pars ii. p. 691. The ſtate of deſolation in other countries of Europe ſeems to have been the ſame. In many of the moſt early charters now extant, the lands granted to monaſteries, or to private perſons, are diſtinguiſhed into ſuch as are cultivated or inhabited, and ſuch as were *eremi*, deſolate. In many inſtances, lands are granted to perſons becauſe they had taken them from the deſert, *ab eremo*, and had cultivated and planted them with inhabitants. This appears from a charter of Charlemagne, publiſhed by Eckhart de Rebus Franciæ Orientalis, vol. ii. p. 864, and from many charters of his ſucceſſors quoted by Du Cange, voc. *eremus*.—Wherever a right of property in land can be thus acquired, it is evident that the country muſt be extremely deſolate and thinly peopled. The firſt ſettlers in America obtained poſſeſſion of land by ſuch a title. Whoever was able to clear and to cultivate a field, was recognized as the proprietor. His induſtry merited ſuch a recompence. The grants in the charters which I have mentioned flow from a ſimilar principle, and there muſt have been ſome reſemblance in the ſtate of the countries.

Muratori adds, that during the eighth and ninth centuries, Italy was greatly infeſted with wolves and other wild beaſts; another mark of its being deſtitute of inhabitants. Murat. Antiq. vol. ii. p. 163. Thus Italy, the pride of the ancient world for its fertility and cultivation, was reduced to the ſtate of a country newly peopled and lately rendered habitable.

I am ſenſible, not only that ſome of theſe deſcriptions of the devaſtations, which I have quoted, may be exaggerated, but that the barbarous tribes, in making their ſettlements, did not proceed invariably in the ſame manner. Some of them ſeemed to be bent on exterminating the ancient inhabitants; others were more diſ-

poſed to incorporate with them. It is not my province either to inquire into the cauſes which occaſioned this variety in the conduct of the conquerors, or to deſcribe the ſtate of thoſe countries where the ancient inhabitants were treated moſt mildly. The facts which I have produced are ſufficient to juſtify the account which I have given in the text, and to prove, that the deſtruction of the human ſpecies, occaſioned by the hoſtile invaſions of the northern nations and their ſubſequent ſettlements, was much greater than many authors ſeem to imagine.

## NOTE VI. Sect. I. p. 18. [F].

I have obſerved, Note II. that our only certain information concerning the ancient ſtate of the barbarous nations muſt be derived from the Greek and Roman writers. Happily an account of the inſtitutions and cuſtoms of one people, to which thoſe of all the reſt ſeem to have been in a great meaſure ſimilar, has been tranſmitted to us by two authors, the moſt capable, perhaps that ever wrote, of obſerving them with profound diſcernment, and of deſcribing them with propriety and force. The reader muſt perceive that Cæſar and Tacitus are the authors whom I have in view. The former gives a ſhort account of the ancient Germans in a few chapters of the ſixth book of his Commentaries; the latter wrote a treatiſe expreſsly on that ſubject. Theſe are the moſt precious and inſtructive monuments of antiquity to the preſent inhabitants of Europe. From them we learn,

1. That the ſtate of ſociety among the ancient Germans was of the rudeſt and moſt ſimple form. They ſubſiſted entirely by hunting or by paſturage. Cæſ. lib. vi. c. 21. They neglected agriculture, and lived chiefly on milk, cheeſe, and fleſh. Ibid. c. 22. Tacitus agrees with him in moſt of theſe points. De morib. Germ. c. 14, 15, 23. The Goths were equally negligent of agriculture. Priſc. Rhet. ap. Byz. Script. v. i. p. 31. B. Society was in the ſame ſtate among the Huns, who diſdained to cultivate the earth, or to touch a plough. Amm. Marcel. lib. xxxi. p. 475. The ſame manners took place among the Alans; ibid. p. 477. While ſociety remains in this ſimple ſtate, men by uniting together ſcarcely relinquiſh any portion of their natural independence. Accordingly we are informed, 2. That the authority of civil government was extremely limited among the Germans. During times of peace they had no common or fixed magiſtrate, but the chief men of every diſtrict diſpenſed juſtice and accommodated differences, Cæſ. ibid. c. 23. Their kings had not abſolute or unbounded power; their authority conſiſted rather in the privilege of adviſing, than in the power of commanding. Matters of ſmall conſequence were determined by the chief men; affairs of importance by the whole community. Tacit. c. 7. 11. The Huns, in like manner, deliberated in common concerning every buſineſs of moment to the ſociety; and were not ſubject to the rigour of regal authority. Amm. Marcel. lib. xxxi. p. 474. 3. Every individual among the ancient Germans was left at liberty to chooſe whither he would take part in any military en-

terpriſe which was propoſed; there ſeems to have been no obligation to engage in it impoſed on him by public authority. "When any of the chief men propoſes an expedition, ſuch as approve of the cauſe and of the leader riſe up, and declare their intention of following him; after coming under this engagement, thoſe who do not fulfil it, are conſidered as deſerters and traitors, and are looked upon as infamous." Cæſ. ibid. c. 23. Tacitus plainly points at the ſame cuſtom, though in terms more obſcure. Tacit. c. 11. 4. As every individual was ſo independent, and maſter in ſo great a degree of his own actions, it became of conſequence, the great object of every perſon among the Germans, who aimed at being a leader, to gain adherents and attach them to his perſon and intereſt. Theſe adherents Cæſar calls *Ambacti* and *Clientes*, i. e. retainers or clients; Tacitus, *Comites*, or companions. The chief diſtinction and power of the leaders conſiſted in being attended by a numerous band of choſen youth. This was their pride as well as ornament during peace and their defence in war. The leaders gained or preſerved the favour of theſe retainers by preſents of armour and of horſes; or by the profuſe though inelegant hoſpitality with which they entertained them. Tacit. c. 14, 15. 5. Another conſequence of the perſonal liberty and independence which the Germans retained, even after they united in ſociety, was their circumſcribing the criminal juriſdiction of the magiſtrate within very narrow limits, and their not only claiming but exerciſing almoſt all the rights of private reſentment and revenge. Their magiſtrates had not the power either of impriſoning or of inflicting any corporal puniſhment on a free man. Tacit. c. 7. Every perſon was obliged to avenge the wrongs which his parents or friends had ſuſtained. Their enemies were hereditary, but not irreconcilable. Even murder was compenſated by paying a certain number of cattle. Tacit. c. 21. A part of the fine went to the king, or ſtate, a part to the perſon who had been injured, or to his kindred. Ibid. c. 12.

Thoſe particulars concerning the inſtitutions and manners of the Germans, though well known to every perſon converſant in ancient literature, I have thought proper to arrange in this order, and to lay before ſuch of my readers as may be leſs acquainted with theſe facts, both becauſe they confirm the account which I have given of the ſtate of the barbarous nations, and becauſe they tend to illuſtrate all the obſervations I ſhall have occaſion to make concerning the various changes in their government and cuſtoms. The laws and cuſtoms introduced by the barbarous nations into their new ſettlements, are the beſt commentary on the writings of Cæſar and Tacitus; and their obſervations are the beſt key to a perfect knowledge of theſe laws and cuſtoms.

One circumſtance, with reſpect to the teſtimonies of Cæſar and Tacitus, concerning the Germans, merits attention. Cæſar wrote his brief account of their manners more than an hundred years before Tacitus compoſed his treatiſe De Moribus Germanorum. An hundred years make a conſiderable period in the pro-

greſs of national manners, eſpecially if, during that time, thoſe people who are rude and unpoliſhed have had much communication with more civilized ſtates. This was the caſe with the Germans. Their intercourſe with the Romans began when Cæſar croſſed the Rhine, and increaſed greatly during the interval between that event and the time when Tacitus flouriſhed. We may accordingly obſerve, that the manners of the Germans, in his time, which Cæſar deſcribes, were leſs improved than thoſe of the ſame people as delineated by Tacitus. Beſides this, it is remarkable that there was a conſiderable difference in the ſtate of ſociety among the different tribes of Germans. The Suiones were ſo much improved, that they began to be corrupted. Tac. cap. 44. The Fenni were ſo barbarous, that it is wonderful how they were able to ſubſiſt. Ibid. cap. 46. Whoever undertakes to deſcribe the manners of the Germans, or to found any political theory upon the ſtate of ſociety among them, ought carefully to attend to both theſe circumſtances.

Before I quit this ſubject, it may not be improper to obſerve, that, though ſucceſſive alterations in their inſtitutions, together with the gradual progreſs of refinement, have made an entire change in the manners of the various people who conquered the Roman empire, there is ſtill one race of men nearly in the ſame political ſituation with theirs, when they firſt ſettled in their new conqueſts; I mean the various tribes and nations of Savages in North America. It cannot then be conſidered either as a digreſſion, or as an improper indulgence of curioſity, to enquire whether this ſimilarity in their political ſtate has occaſioned any reſemblance between their character and manners. If the likeneſs turns out to be ſtriking, it is a ſtronger proof that a juſt account has been given of the ancient inhabitants of Europe, than the teſtimony even of Cæſar or Tacitus.

1. The Americans ſubſiſt chiefly by hunting and fiſhing. Some tribes neglect agriculture entirely. Among thoſe who cultivate ſome ſmall ſpot near their huts, that, together with all works of labour, is performed by the women. P. Charlevoix Journal Hiſtorique d'un Voyage de l'Amerique, 4to. Par. 1744. p. 334. In ſuch a ſtate of ſociety, the common wants of men being few, and their mutual dependence upon each other ſmall, their union is extremely imperfect and feeble, and they continue to enjoy their natural liberty almoſt unimpaired. It is the firſt idea of an American, that every man is born free and independent, and that no power on earth hath any right to diminiſh or circumſcribe his natural liberty. There is hardly any appearance of ſubordination either in civil or domeſtic government. Every one does what he pleaſes. A father and mother live with their children, like perſons whom chance has brought together, and whom no common bond unites. Their manner of educating their children is ſuitable to this principle. They never chaſtiſe or puniſh them, even during their infancy. As they advance in years, they continue to be entirely maſters of their own actions, and ſeem not to be conſcious of being reſponſible for any part of their conduct. Id. p. 272,

273.——2. The power of their civil magiſtrates is extremely limited. Among moſt of their tribes, the Sachem or chief is elective. A council of old men is choſen to aſſiſt him, without whoſe advice he determines no affair of importance. The Sachems neither poſſeſs nor claim any great degree of authority. They propoſe and intreat, rather than command. The obedience of their people is altogether voluntary. Id. p. 266, 268.——3. The ſavages of America engage in their military enterpriſes, not from conſtraint, but choice. When war is reſolved, a chief ariſes, and offers himſelf to be the leader. Such as are willing (for they compel no perſon) ſtand up one after another, and ſing their war ſong. But if, after this, any of theſe ſhould refuſe to follow the leader to whom they have engaged, his life would be in danger, and he would be conſidered as the moſt infamous of men. Id. p. 217, 218.——4. Such as engage to follow any leader, expect to be treated by him with great attention and reſpect; and he is obliged to make them preſents of conſiderable value. Id. p. 218.——5. Among the Americans, the magiſtrate has ſcarcely any criminal juriſdiction. Id. p. 272. Upon receiving any injury, the perſon or family offended may inflict what puniſhment they pleaſe on the perſon who was the author of it. Id. p. 274. Their reſentment and deſire of vengeance are exceſſive and implacable. Time can neither extinguiſh nor abate it. It is the chief inheritance parents leave to their children; it is tranſmitted from generation to generation, until an occaſion be found of ſatisfying it. Id. p. 309. Sometimes, however, the offended party is appeaſed. A compenſation is paid for a murder that has been committed. The relations of the deceaſed receive it; and it conſiſts moſt commonly of a captive taken in war, who, being ſubſtituted in place of the perſon who was murdered, aſſumes his name, and is adopted into his family. Id. p. 274. The reſemblance holds in many other particulars. It is ſufficient for my purpoſe to have pointed out the ſimilarity of thoſe great features which diſtinguiſh and characterize both people. Bochart, and other philologiſts of the laſt century, who, with more erudition than ſcience, endeavoured to trace the migrations of various nations, and who were apt, upon the ſlighteſt appearance of reſemblance, to find an affinity between nations far removed from each other, and to conclude that they were deſcended from the ſame anceſtors, would hardly have failed, on viewing ſuch an amazing ſimilarity, to pronounce with confidence, "That the Germans and Americans muſt be the ſame people." But a philoſopher will ſatisfy himſelf with obſerving, "That the characters of nations depend on the ſtate of ſociety in which they live, and on the political inſtitutions eſtabliſhed among them; and that the human mind, whenever it is placed in the ſame ſituation, will, in ages the moſt diſtant, and in countries the moſt remote, aſſume the ſame form, and be diſtinguiſhed by the ſame manners."

I have puſhed the compariſon between the Germans and Americans no farther than was neceſſary for the illuſtration of my ſubject. I do not pretend that the ſtate of ſociety in the two coun-

tries was perfectly similar in every respect. Many of the German tribes were more civilized than the Americans. Some of them were not unacquainted with agriculture; almost all of them had flocks of tame cattle, and depended upon them for the chief part of their subsistence. Most of the American tribes subsist by hunting, and are in a ruder and more simple state than the ancient Germans. The resemblance, however, between their condition, is greater, perhaps, than any that history affords an opportunity of observing between any two races of uncivilized people, and this has produced a surprising similarity of manners.

## NOTE VII. Sect. I. p. 18. [G].

The booty gained by an army belonged to the army. The king himself had no part of it but what he acquired by lot. A remarkable instance of this occurs in the history of the Franks. The army of Clovis, the founder of the French monarchy, having plundered a church, carried off, among other sacred utensils, a vase of extraordinary size and beauty. The bishop sent deputies to Clovis, beseeching him to restore the vase, that it might be again employed in the sacred services to which it had been consecrated. Clovis desired the deputies to follow him to Soissons, as the booty was to be divided in that place, and promised, that if the lot should give him the disposal of the vase, he would grant what the bishop desired. When he came to Soissons, and all the booty was placed in one great heap in the middle of the army, Clovis entreated, that before making the division, they would give him that vase over and above his share. All appeared willing to gratify the king, and to comply with his request, when a fierce and haughty soldier lifted up his battle-axe, and striking the vase with the utmost violence, cried out with a loud voice, "You shall receive nothing here but that to which the lot gives you a right." Gregor. Turon. Histor. Francorum, lib. ii. c. 27. p. 70. Par. 1610.

## NOTE VIII. Sect. I. p. 20. [H].

The history of the establishment and progress of the feudal system is an interesting object to all the nations of Europe. In some countries, their jurisprudence and laws are still in a great measure feudal. In others, many forms and practices established by custom, or founded on statutes, took their rise from the feudal law, and cannot be understood without attending to the ideas peculiar to it. Several authors of the highest reputation for genius and erudition, have endeavoured to illustrate this subject, but still many parts of it are obscure. I shall endeavour to trace, with precision, the progress and variation of ideas concerning property in land among the barbarous nations; and shall attempt to point out the causes which introduced these changes, as well as the effects which followed upon them. Property in land seems to have gone through four successive changes among the people who settled in the various provinces of the Roman empire.

I. While the barbarous nations remained in their original countries, their property in land was only temporary, and they had no

certain limits to their poſſeſſions. After feeding their flocks in one great diſtrict, they removed with them, and with their wives and families, to another; and abandoned that likewiſe in a ſhort time. They were not, in conſequence of this imperfect ſpecies of property, brought under any poſitive or formal obligation to ſerve the community; all their ſervices were purely voluntary. Every individual was at liberty to chooſe how far he would contribute towards carrying on any military enterprize. If he followed a leader in any expedition, it was from attachment, not from a ſenſe of obligation. The cleareſt proof of this has been produced in Note VI. While property continued in this ſtate, we can diſcover nothing that bears any reſemblance to a feudal tenure, or to the ſubordination and military ſervice which the feudal ſyſtem introduced.

II. Upon ſettling in the countries which they had ſubdued, the victorious troops divided the conquered lands. Whatever portion of them fell to a ſoldier, he ſeized as the recompence due to his valour, as a ſettlement acquired by his own ſword. He took poſſeſſion of it as a freeman in full property. He enjoyed it during his own life, and could diſpoſe of it at pleaſure, or tranſmit it as an inheritance to his children. Thus property in land became fixed. It was at the ſame time *allodial*, i. e. the poſſeſſor had the entire right of property and dominion, he held of no ſovereign or ſuperior lord, to whom he was bound to do homage and perform ſervice. But as theſe new proprietors were in ſome danger (as has been obſerved in the text) of being diſturbed by the remainder of the ancient inhabitants, and in ſtill greater danger of being attacked by ſucceſſive colonies of barbarians as fierce and rapacious as themſelves, they ſaw the neceſſity of coming under obligations to defend the community, more explicit than thoſe to which they had been ſubject in their original habitations. On this account, immediately upon their fixing in their new ſettlements, every freeman became bound to take arms in defence of the community, and, if he refuſed or neglected ſo to do, was liable to a conſiderable penalty. I do not mean that any contract of this kind was formally concluded, or mutually ratified by any legal ſolemnity. It was eſtabliſhed by tacit conſent, like the other compacts which hold ſociety together. Their mutual ſecurity and preſervation made it the intereſt of all to recognize its authority, and to enforce the obſervation of it. We can trace back this new obligation on the proprietors of land to a very early period in the hiſtory of the Franks. Chilperic, who began his reign A. D. 562, exacted a fine, *bannos juſſit exigi*, from certain perſons who had refuſed to accompany him in an expedition. Gregor. Turon. lib. v. c. 26. p. 211. Childebert, who began his reign A. D 576, proceeded in the ſame manner againſt others who had been guilty of a like crime. Id. lib. vii. c. 42. p. 342. Such a fine could not have been exacted while property continued in its firſt ſtate, and military ſervice was entirely voluntary. Charlemagne ordained, that every freeman who poſſeſſed five manſi, i. e. ſixty acres of land, *in property*, ſhould march in perſon againſt the enemy. Capitul. A. D. 807. Louis le Debon-

naire, A. D. 815, granted lands to certain Spaniards who fled from the Saracens, and allowed them to ſettle in his territories, on condition that they ſhould ſerve in the army *like other freemen*. Capitul. vol. i. p. 500. By land poſſeſſed *in property*, which is mentioned in the law of Charlemagne, we are to underſtand, according to the ſtyle of that age, allodial land; *alodes* and *proprietas*, *alodum* and *proprium* being words perfectly ſynonimous. Du Cange voce *Alodis*. The cleareſt proof of the diſtinction between allodial and beneficiary poſſeſſion, is contained in two charters publiſhed by Muratori, by which it appears, that a perſon might poſſeſs one part of his eſtate as allodial, which he could diſpoſe of at pleaſure, the other as a *beneficium*, of which he had only the uſufruct, the property returning to the ſuperior lord on his demiſe. Antiq. Ital. medii ævi, vol. i. p. 559, 565. The ſame diſtinction is pointed out in a Capitulare of Charlemagne. A. D. 812, edit. Baluz. vol. i. p. 491. Count Everard, who married a daughter of Louis le Debonnaire, in the curious teſtament, by which he diſpoſes of his vaſt eſtate among his children, diſtinguiſhes between what he poſſeſſed *proprietate*, and what he held *beneficio*; and it appears that the greater part was allodial, A. D. 837. Aub. Miræi Opera Diplomatica, Lovan. 1723. vol. i. p. 19.

In the ſame manner *Liber homo* is commonly oppoſed to *Vaſſus* or *Vaſſallus*; the former denotes an allodial propietor, the latter one who held of a ſuperior. Theſe *free* men were under an obligation to ſerve the ſtate; and this duty was conſidered as ſo ſacred, that free men were prohibited from entering into holy orders unleſs they had obtained the conſent of the ſovereign. The reaſon given for this in the ſtatute is remarkable, "For we are informed that ſome do ſo, not ſo much out of devotion, as in order to avoid that military ſervice which they are bound to perform. Capitul. lib. i. § 114. If, upon being ſummoned into the field, any free man refuſed to obey, a full *Herebannum*, i. e. a fine of ſixty crowns, was to be exacted from him according to the law of the Franks." Capit. Car. Magn. ap. Leg. Longob. lib. i. tit. 14. § 13. p. 539. This expreſſion, according to the law of the Franks, ſeems to imply, that both the obligation to ſerve, and the penalty on thoſe who diſregarded it, were coëval with the laws made by the Franks at their firſt ſettlement in Gaul. This fine was levied with ſuch rigour, "That if any perſon convicted of this crime was inſolvent, he was reduced to ſervitude, and continued in that ſtate until ſuch time as his labour ſhould amount to the value of the *herebannum*." Ibid. The emperor Lotharius rendered the penalty ſtill more ſevere; and if any perſon poſſeſſing ſuch an extent of property as made it incumbent on him to take the field in perſon, refuſed to obey the ſummons, all his goods were declared to be forfeited, and he himſelf might be puniſhed with baniſhment. Murat. Script. Ital. vol. i. pars ii. p. 153.

III. Property in land having thus become fixed, and ſubject to military ſervice, another change was introduced, though ſlowly, and ſtep by ſtep. We learn from Tacitus, that the chief men among the Germans endeavoured to attach to their perſons and

intereſts certain adherents whom he calls *Comites*. Theſe fought under their ſtandard, and followed them in all their enterprizes. The ſame cuſtom continued among them in their new ſettlements, and thoſe attached or devoted followers were called *fideles*, *antruſtiones*, *homines in truſte Dominica*, *leudes*. Tacitus informs us, that the rank of a Comes was deemed honourable; De Morib. Germ. c. 13. The compoſition, which is the ſtandard by which we muſt judge of the rank and condition of perſons in the middle ages, paid for the murder of one *in truſte Dominica*, was triple to that paid for the murder of a freeman. Leg. Salicor. Tit. 44. § 1 & 2. While the Germans remained in their own country, they courted the favour of theſe Comites, by preſents of arms and horſes, and by hoſpitality. See Note VI. As long as they had no fixed property in land, theſe were the only gifts that they could beſtow, and the only reward which their followers deſired. But upon their ſettling in the countries which they conquered, and when the value of property came to be underſtood among them, inſtead of thoſe ſlight preſents, the kings and chieftains beſtowed a more ſubſtantial recompence in land on their adherents. Theſe grants were called *beneficia*, becauſe they were gratuitous donations; and *honores*, becauſe they were regarded as marks of diſtinction. What were the ſervices originally exacted in return for theſe *beneficia* cannot be determined with abſolute preciſion; becauſe there are no records ſo ancient. When allodial poſſeſſions were firſt rendered feudal, they were not, at once, ſubjected to all the feudal ſervices. The tranſition here, as in all other changes of importance, was gradual. As the great object of a feudal vaſſal was to obtain protection, when allodial proprietors firſt conſented to become vaſſals of any powerful leader, they continued to retain as much of their ancient independence as was conſiſtent with that new relation. The homage which they did to the ſuperior of whom they choſe to hold, was called *homagium planum*, and bound them to nothing more than fidelity, but without any obligation either of military ſervice, or attendance in the courts of their ſuperior. Of this *homagium planum* ſome traces, though obſcure, may ſtill be diſcovered. Bruſſel, tom. i. p. 97. Among the ancient writs publiſhed by D. D. De Vic and Vaiſette hiſt. de Langued. are a great many which they call *homagia*. They ſeem to be an immediate ſtep between the *homagium planum* mentioned by Bruſſel, and the engagement to perform complete feudal ſervice. The one party promiſes protection, and grants certain caſtles or lands; the other engages to defend the perſon of the granter, and to aſſiſt him likewiſe in defending his property as often as he ſhall be ſummoned to do ſo. But theſe engagements are accompanied with none of the feudal formalities, and no mention is made of any of the other feudal ſervices. They appear rather to be a mutual contract between equals, than the engagement of a vaſſal to perform ſervices to a ſuperior lord. Preuves de l'hiſt. de lang. tom. ii. 173. & paſſim. As ſoon as men were accuſtomed to theſe, the other feudal ſervices were gradually introduced. M. de Monteſquieu conſiders theſe *beneficia* as fiefs, which originally ſubjected

thoſe who held them to military ſervice. L'Eſprit des Loix, l. xxx. c. 3 & 16. M. l'Abbe de Mably contends that ſuch as held theſe were at firſt ſubjected to no other ſervice than what was incumbent on every freeman. Obſervations ſur l'hiſtoire de France, i. 356. But, upon comparing their proofs and reaſonings and conjectures, it ſeems to be evident, that as every freeman, in conſequence of his allodial property, was bound to ſerve the community under a ſevere penalty, no good reaſon can be aſſigned for conferring theſe *beneficia*, if they did not ſubject ſuch as received them to ſome new obligation. Why ſhould a king have ſtripped himſelf of his domain, if he had not expected that, by parcelling it out, he might acquire a right to ſervices, to which he had formerly no title? We may then warrantably conclude, "That as allodial property ſubjected thoſe who poſſeſſed it to ſerve the community, ſo *beneficia* ſubjected ſuch as held them to perſonal ſervice and fidelity to him from whom they received theſe lands." Theſe *beneficia* were granted originally only during pleaſure. No circumſtance relating to the cuſtoms of the middle ages is better aſcertained than this; and innumerable proofs of it might be added to thoſe produced in L'Eſprit des Loix, l. xxx. c. 16. and by Du Cange, voc. *Beneficium & feudum*.

IV. But the poſſeſſion of benefices did not continue long in this ſtate. A precarious tenure during pleaſure was not ſufficient to ſatisfy ſuch as held lands, and by various means they gradually obtained a confirmation of their benefices during life. Feudor. lib. tit. i. Du Cange produces ſeveral quotations from ancient charters and chronicles in proof of this; Gloſ. voc. *Beneficium*. After this it was eaſy to obtain or extort charters rendering *beneficia* hereditary, firſt in the direct line, then in the collateral, and at laſt in the female line. Leg. Longob. lib. iii. tit. 8. Du Cange, voc. *Beneficium*.

It is no eaſy matter to fix the preciſe time when each of theſe changes took place. M. l'Ab. Mably conjectures, with ſome probability, that Charles Martel firſt introduced the practice of granting *beneficia* for life; Obſervat. tom. i. p. 103, 160; and that Louis le Debonnaire was among the firſt who rendered them hereditary, is evident from the authorities to which he refers; Id. 429. Mabillon however has publiſhed a placitum of Louis le Debonnaire, A. D. 860, by which it appears that he ſtill continued to grant ſome *beneficia* only during life. De Re Diplomatica, lib. vi. p. 353. In the year 889, Odo king of France granted lands to Ricabodo, fideli ſuo, jure beneficiario & fructuario, during his own life; and if he ſhould die, and a ſon were born to him, that right was to continue during the life of his ſon. Mabillon ut ſupra, p. 556. This was an intermediate ſtep between fiefs merely during life, and fiefs hereditary to perpetuity. While *beneficia* continued under their firſt form, and were held only during pleaſure, he who granted them not only exerciſed the *dominium* or prerogative of ſuperior lord, but he retained the property, giving his vaſſal only the *uſufruct*.—But under the latter form, when they became hereditary, although feudal lawyers continued to define a *beneficium* agreeably to its original nature, the property was in effect taken out of the hands of

the ſuperior lords, and lodged in thoſe of the vaſſal. As ſoon as the reciprocal advantages of the feudal mode of tenure came to be underſtood by ſuperiors as well as vaſſals, that ſpecies of holding became ſo agreeable to both, that not only lands, but caſual rents, ſuch as the profits of a toll, the fare paid at ferries, &c. the ſalaries or perquiſites of offices, and even penſions themſelves, were granted and held as fiefs; and military ſervice was promiſed and exacted on account of theſe. Morice Mem. pour ſervir de preuves a l'hiſt. de Bretagne, tom. ii. 78, 690. Bruſſel, tom. i. p. 41. How abſurd ſoever it may ſeem to grant or to hold ſuch precarious and caſual property as a fief, there are inſtances of feudal tenures ſtill more ſingular. The profits ariſing from the maſſes ſaid at an altar were properly an eccleſiaſtical revenue, belonging to the clergy of the church or monaſtery which performed that duty; but theſe were ſometimes ſeized by the powerful barons. In order to aſcertain their right to them, they held them as fiefs of the church, and parcelled them out in the ſame manner as other property to their ſub-vaſſals. Bouquet, receuil des hiſt. vol. x. 238, 480. The ſame ſpirit of encroachment which rendered fiefs hereditary, led the nobles to extort from their ſovereigns hereditary grants of offices. Many of the great offices of the crown became hereditary in moſt of the kingdoms in Europe; and ſo conſcious were monarchs of this ſpirit of uſurpation among the nobility, and ſo ſolicitous to guard againſt it, that, on ſome occaſions, they obliged the perſons whom they promoted to any office of dignity, to grant an obligation, that neither they nor their heirs ſhould claim it as belonging to them by hereditary right. A remarkable inſtance of this is produced, Mem. de l'Acad. des Inſcript. tom. xxx. p. 595. Another occurs in the Theſaur. anecdot. publiſhed by Martene & Durand, vol. i. p. 873.—This revolution in property occaſioned a change correſponding to it in political government; the great vaſſals of the crown, as they acquired ſuch extenſive poſſeſſions, uſurped a proportional degree of power, depreſſed the juriſdiction of the crown, and trampled on the privileges of the people. It is on account of this connection, that it becomes an object of importance in hiſtory to trace the progreſs of feudal property; for, upon diſcovering in what ſtate property was at any particular period, we may determine with preciſion what was the degree of power poſſeſſed by the king or by the nobility at that juncture.

One circumſtance more, with reſpect to the changes which property underwent, deſerves attention. I have ſhewn, that when the various tribes of barbarians divided their conqueſts in the fifth and ſixth centuries, the property which they acquired was allodial; but in ſeveral parts of Europe, property had become almoſt entirely feudal by the beginning of the tenth century. The former ſpecies of property ſeems to be ſo much better and more deſirable than the latter, that ſuch a change appears ſurpriſing, eſpecially when we are informed that allodial property was frequently converted into feudal, by a voluntary deed of the poſſeſſor. The motives which determined them to a choice ſo repugnant to the ideas of modern times concerning property, have been inveſtigated and

explained by M. de Monteſquieu, with his uſual diſcernment and accuracy, lib. xxxi. c. 8. The moſt conſiderable is that of which we have an hint in Lambertus Ardenſis, an ancient writer quoted by Du Cange, voce *Alodis*. In thoſe times of anarchy and diſorder which became general in Europe after the death of Charlemagne, when there was ſcarcely any union among the different members of the community, and individuals were expoſed, ſingle and undefended by government, to rapine and oppreſſion, it became neceſſary for every man to have a powerful protector, under whoſe banner he might range himſelf, and obtain ſecurity againſt enemies whom ſingly he could not oppoſe. For this reaſon he relinquiſhed his allodial independence, and ſubjected himſelf to the feudal ſervices, that he might find ſafety under the patronage of ſome reſpectable ſuperior. In ſome parts of Europe, this change from allodial to feudal property became ſo general, that he who poſſeſſed land had no longer any liberty of choice left. He was obliged to recognize ſome liege lord, and to hold of him. Thus Beaumanoir informs us, that in the counties of Clermont and Beauvois, if the lord or count diſcovered any lands within his juriſdiction, for which no ſervice was performed, and which paid to him no taxes or cuſtoms, he might inſtantly ſeize it as his own; for, ſays he, no man can hold allodial property. Couſt. ch. 24. p. 123. Upon the ſame principle is founded a maxim, which has at length become general in the law of France, *Nulle terre ſans Seigneur*. In other provinces of France, allodial property ſeems to have remained longer unalienated, and to have been more highly valued. A great number of charters, containing grants, or ſales, or exchanges of allodial lands in the province of Languedoc, are publiſhed. Hiſt. gener. de Langued. par D. D. De Vic & Vaiſette, tom. ii. During the ninth, tenth, and great part of the eleventh century, the property in that province ſeems to have been entirely allodial; and ſcarcely any mention of feudal tenures occurs in the deeds of that country. The ſtate of property, during theſe centuries, ſeems to have been perfectly ſimilar in Catalonia and the country of Rouſillon, as appears from the original charters publiſhed in the Appendix to Petr. de la Marca's treatiſe de marca ſive limite Hiſpanico. Allodial property ſeems to have continued in the Low Countries to a period ſtill later. During the eleventh, twelfth, and thirteenth centuries, this ſpecies of property ſeems to have been of conſiderable extent. Miræi opera diplom. vol. i. 34, 74, 75, 83, 296, 817, 842, 847, 578. Some veſtiges of allodial property appear there as late as the fourteenth century. Ibid. 218. Several facts which prove that allodial property ſubſiſted in different parts of Europe long after the introduction of feudal tenures, and which tend to illuſtrate the diſtinction between theſe two different ſpecies of poſſeſſion, are produced by M. Houard, Anciennes Loix des François, conſervées dans les Coutumes Anglоiſes, vol. i. p. 192, &c. The notions of men with reſpect to property vary according to the diverſity of their underſtandings, and the caprice of their paſſions. At the ſame time that ſome perſons were fond of relinquiſhing allodial property, in order to hold it by feudal tenure, others ſeem to

have been ſolicitous to convert their fiefs into allodial property. An inſtance of this occurs in a charter of Louis le Debonnaire, publiſhed by Eckhard, Commentarii de rebus Franciæ Orientalis, vol. ii. p. 885. Another occurs in the year 1299, Reliquiæ MSS. omnis ævi, by Ludwig, vol. i. p. 209; and even one as late as the year 1337, ibid. vol. vii. p. 40. The ſame thing took place in the Low Countries. Miræi oper. i. 52.

In tracing theſe various revolutions of property, I have hitherto chiefly confined myſelf to what happened in France, becauſe the ancient monuments of that nation have either been more carefully preſerved, or have been more clearly illuſtrated than thoſe of any people in Europe.

In Italy, the ſame revolutions happened in property, and ſucceeded each other in the ſame order. There is ſome ground, however, for conjecturing that allodial property continued longer in eſtimation among the Italians, than among the French. It appears, that many of the charters granted by the emperors in the ninth century, conveyed an allodial right to land. Murat. Antiq. med. ævi. v. i. p 575, &c. But in the eleventh century we find ſome examples of perſons who reſigned their allodial property, and returned it back as a feudal tenure. Id. p. 610, &c. Muratori obſerves, that the word *feudum*, which came to be ſubſtituted in place of *beneficium*, does not occur in any authentic charter previous to the eleventh century. Id. 594. A charter of king Robert of France, A. D. 1008, is the earlieſt deed in which I have met with the word *feudum*. Bouquet receuil des hiſtoriens de Gaule & de la France, tom. x. p. 593. b. This word occurs indeed in an edict, A. D. 790, publiſhed by Bruſſel, vol. i. p. 77. But the authenticity of that deed has been called in queſtion, and perhaps the frequent uſe of the word *feudum* in it is an additional reaſon for doing ſo. The account which I have given of the nature both of allodial and feudal poſſeſſions receive ſome information from the etymology of the words themſelves. *Alode* or *allodium* is compounded of the German particle *an* and *lot*, *i. e.* land obtained by lot. Wachteri Gloſſar. Germanicum, voc. *Allodium* p. 35. It appears from the authorities produced by him and by Du Cange, voc. *Sors*, that the northern nations divided the lands which they had conquered in this manner. Feodum is compounded of *od* poſſeſſion or eſtate, and *ſeo* wages, pay; intimating that it was ſtipendary, and granted as a recompence for ſervice. Wachterus, ibid. voc. *Feodum*, p. 441.

The progreſs of the feudal ſyſtem among the Germans was perfectly ſimilar to that which we have traced in France. But as the emperors of Germany, eſpecially after the Imperial crown paſſed from the deſcendents of Charlemagne to the houſe of Saxony, were far ſuperior to the contemporary monarchs of France in abilities, the Imperial vaſſals did not aſpire ſo early to independence nor did they ſo ſoon obtain the privilege of poſſeſſing their benefices by hereditary right. According to the compilers of the Libri Feudorum, Conrad II. or the Salic, was the firſt emperor who rendered fiefs hereditary. Lib. i. tit. i. Conrad began his

reign A. D. 1024. Ludovicus Pius, under whoſe reign grants of hereditary fiefs were frequent in France, ſucceeded his father A. D. 814. Not only was this innovation ſo much later in being introduced among the vaſſals of the German emperors, but even after Conrad had eſtabliſhed it, the law continued favourable to the ancient practice; and unleſs the charter of the vaſſal bore expreſsly that the fief deſcended to his heirs, it was preſumed to be granted only during life. Lib. feud. ibid. Even after the alteration made by Conrad, it was not uncommon in Germany to grant fiefs only for life; a charter of this kind occurs as late as the year 1376. Charta ap. Boehmer. Princip. Jur. feud. p. 361. The tranſmiſſion of fiefs to collateral and female heirs, took place very ſlowly among the Germans. There is extant a charter, A. D. 1201, conveying the right of ſucceſſion to females, but it is granted as an extraordinary mark of favour, and in reward of uncommon ſervices. Boehmer ibid. p. 365. In Germany, as well as in France and Italy, a conſiderable part of the lands continued to be allodial long after the feudal mode of tenure was introduced. It appears from the Codex Diplomaticus Monaſterii Buch, that a great part of the lands in the marquiſate of Miſnia was ſtill allodial as late as the thirteenth century. No. 31, 36, 37, 46, &c. ap. Scriptores hiſt. German. cura Schoetgenii & Kreyſigii. Altenb. 1755. vol. ii. 183, &c. Allodial property ſeems to have been common in another diſtrict of the ſame province, during the ſame period. Reliquiæ Diplomaticæ Sanctimonial. Beutiz. No. 17, 36, 58, ibid. 374, &c.

## NOTE IX. Sect. I. p. 21. [I].

As I ſhall have occaſion, in another Note, to repreſent the condition of that part of the people who dwelt in cities, I will confine myſelf in this to conſider the ſtate of the inhabitants of the country. The perſons employed in cultivating the ground during the ages under review may be divided into three claſſes; I. *Servi* or ſlaves. This ſeems to have been the moſt numerous claſs, and conſiſted either of captives taken in war, or of perſons the property in whom was acquired in ſome one of the various methods enumerated by Du Cange, voc. *Servus*, v. 6. p. 447. The wretched condition of this numerous race of men will appear from ſeveral circumſtances. 1. Their maſters had abſolute dominion over their perſons. They had the power of puniſhing their ſlaves capitally, without the intervention of any judge. This dangerous right they poſſeſſed not only in the more early periods, when their manners were fierce, but it continued as late as the twelfth century. Joach. Potgieſſerus de ſtatu ſervorum. Lemgov. 1737. 4to. lib. ii. cap. i. § 4. 10, 13, 24. Even after this juriſdiction of maſters, came to be reſtrained, the life of a ſlave was deemed to be of ſo little value, that a very ſlight compenſation atoned for taking it away. Idem, lib. iii. c. 6. If maſters had power over the lives of their ſlaves, it is evident that almoſt no bounds would be ſet to the rigour of the puniſhments which they might inflict upon them. The codes of ancient laws

preſcribed puniſhments for the crimes of ſlaves different from thoſe which were inflicted on free men. The latter paid only a fine or compenſation; the former were ſubjected to corporal puniſhments. The cruelty of theſe was in many inſtances exceſſive. Slaves might be put to the rack on very ſlight occaſions The laws with reſpect to theſe points are to be found in Potgieſſerus, lib. iii. cap. 7, 2. and are ſhocking to humanity. If the dominion of maſters over the lives and perſons of their ſlaves was thus extenſive, it was no leſs ſo over their actions and property. They were not originally permitted to marry. Male and female ſlaves were allowed and even encouraged to cohabit together. But this union was not conſidered as a marriage, it was called *contubernium*, not *nuptiæ* or *matrimonium*. Potgieſſ. lib. ii. c. 2. § 1. This notion was ſo much eſtabliſhed, that, during ſeveral centuries after the barbarous nations embraced the Chriſtian religion, ſlaves, who lived as huſband and wife, were not joined together by any religious ceremony, and did not receive the nuptial benediction from a prieſt. Ibid. § 10, 11. When this conjunction between ſlaves came to be conſidered as a lawful marriage, they were not permitted to marry without the conſent of their maſter; and ſuch as ventured to do ſo, without obtaining that, were puniſhed with great ſeverity, and ſometimes were put to death. Potgieſſ. ibid. § 12, &c. Gregor. Turon. hiſt. lib. v. c. 3. When the manners of the European nations became more gentle, and their ideas more liberal, ſlaves who married without their maſter's conſent were ſubjected only to a fine. Potgieſſ. ibid. § 20. Du Cange Gloſſ. voc. *Foriſmaritagium*. 3. All the children of ſlaves were in the ſame condition with their parents, and became the property of the maſter. Du Cange Gloſſ. voc. *Servus*, vol. vi. 450. Murat. Antiq. Ital. vol. i. 766. 4. Slaves were ſo entirely the property of their maſters, that they could ſell them at pleaſure. While domeſtic ſlavery continued, property in a ſlave was ſold in the ſame manner with that which a perſon had in any other moveable. Afterwards ſlaves became *adſcripti glebæ*, and were conveyed by ſale, together with the farm or eſtate to which they belonged. Potgieſſerus has collected the laws and charters which illuſtrate this well-known circumſtance in the condition of ſlaves. Lib. ii. c. 4. 5. Slaves had a title to nothing but ſubſiſtence and clothes from their maſter; all the profits of their labour accrued to him. If a maſter, from indulgence, gave his ſlaves any *peculium*, or fixed allowance for their ſubſiſtence, they had no right of property in what they ſaved out of that. All that they accumulated belonged to their maſter. Potgieſſ. lib. ii. c. 10. Murat. Antiq. Ital. vol. i. 768. Du Cange, voc. *Servus*, vol. vi. p. 451. Conformably to the ſame principle, all the effects of ſlaves belonged to their maſter at their death, and they could not diſpoſe of them by teſtament. Potgieſſ. lib. ii. c. 11. 6. Slaves were diſtinguiſhed from free men by a peculiar dreſs. Among all the barbarous nations, long hair was a mark of dignity and of freedom; ſlaves were for that reaſon obliged to ſhave their heads; and by this diſtinction, how indifferent ſoever it may be

in its own nature, they were reminded every moment of the inferiority of their condition. Potgieſſ. lib. iii. c. 4. For the ſame reaſon it was enacted in the laws of almoſt all the nations of Europe, that no ſlave ſhould be admitted to give evidence againſt a free man in a court of juſtice. Du Cange, voc. *Servus*, vol. vi. p. 451. Potgieſſ. lib. iii. c. 3.

2. *Villani.* They were likewiſe *adſcripti glebæ* or *villæ*, from which they derived their name, and were transferable along with it. Du Cange, voc. *Villanus.* But in this they differed from ſlaves, that they paid a fixed rent to their maſter for the land which they cultivated, and, after paying that, all the fruits of their labour and induſtry belonged to themſelves in property. This diſtinction is marked by Pierre de Fontain's Conſeil. Vie de St. Louis par Joinville, p. 119. edit. de Du Cange. Several caſes decided agreeably to this principle are mentioned by Murat. ib. p. 773.

3. The laſt claſs of perſons employed in agriculture were free men. Theſe are diſtinguiſhed by various names among the writers of the middle ages, *Arimanni, conditionales, originarii, tributales, &c.* Theſe ſeem to have been perſons who poſſeſſed ſome ſmall allodial property of their own, and beſides that, cultivated ſome farm belonging to their more wealthy neighbours, for which they paid a fixed rent; and bound themſelves likewiſe to perform ſeveral ſmall ſervices *in prato vel in meſſe, in aratura vel in vinea*, ſuch as ploughing a certain quantity of their landlord's ground, aſſiſting him in harveſt and vintage work, &c. The cleareſt proof of this may be found in Muratori, v. i. p. 712. and in Du Cange under the reſpective words above mentioned. I have not been able to diſcover whether theſe *arimanni*, &c. were removeable at pleaſure, or held their farms by leaſe for a certain number of years. The former, if we may judge from the genius and maxims of the age, ſeems to be moſt probable. Theſe perſons, however, were conſidered as free men in the moſt honourable ſenſe of the word; they enjoyed all the privileges of that condition, and were even called to ſerve in war; an honour to which no ſlave was admitted. Murat. Antiq. vol. i. p. 743. vol. ii. p. 446. This account of the condition of theſe three different claſſes of perſons, will enable the reader to apprehend the full force of an argument which I ſhall produce in confirmation of what I have ſaid in the text concerning the wretched ſtate of the people during the middle ages. Notwithſtanding the immenſe difference between the firſt of theſe claſſes and the third, ſuch was the ſpirit of tyranny which prevailed among the great proprietors of lands, and ſo various their opportunities of oppreſſing thoſe who were ſettled on their eſtates, and of rendering their condition intolerable, that many free men, in deſpair renounced their liberty, and voluntarily ſurrendered themſelves as ſlaves to their powerful maſters. This they did, in order that their maſters might become more immediately intereſted to afford them protection, together with the means of ſubſiſting themſelves and their families. The forms of ſuch a ſurrender, or *obnoxiatio*, as it was then called, are preſerved by Marculfus, lib. ii. c. 28; and by the anonymous author publiſhed by M. Bignon, to-

gether with the collection of *formulæ* compiled by Marculfus, c. 16. In both, the reaſon given for the *obnoxiatio*, is the wretched and indigent condition of the perſon who gives up his liberty. It was ſtill more common for free men to ſurrender their liberty to biſhops or abbots, that they might partake of the ſecurity which the vaſſals and ſlaves of churches and monaſteries enjoyed, in conſequence of the ſuperſtitious veneration paid to the ſaint under whoſe immediate protection they were ſuppoſed to be taken. Du Cange, voc. *Oblatus*, vol. iv. p. 1286. That condition muſt have been miſerable indeed, which could induce a free man voluntarily to renounce his liberty, and to give up himſelf as a ſlave to the diſpoſal of another. The number of ſlaves in every nation of Europe was immenſe. The greater part of the inferior claſs of people in France were reduced to this ſtate at the commencement of the third race of kings. L'Eſpr. des Loix, liv. xxx. c. 11. The ſame was the caſe in England. Brady Pref. to Gen. Hiſt. Many curious facts, with reſpect to the ancient ſtate of *villains*, or ſlaves in England, are publiſhed in Obſervations on the Statutes, chiefly the more ancient, third edit. p. 269, &c.

## NOTE X. Sect. I. p. 23. [K].

Innumerable proofs of this might be produced. Many charters, granted by perſons of the higheſt rank, are preſerved, from which it appears that they could not ſubſcribe their name. It was uſual for perſons, who could not write, to make the ſign of the croſs, in confirmation of a charter. Several of theſe remain, where kings and perſons of great eminence affix *ſignum crucis manu propria pro ignoratione literarum*. Du Cange, voc. *Crux*, vol. iii. p. 1191. From this is derived the phraſe of ſigning inſtead of ſubſcribing a paper. In the ninth century, Herbaud Comes Palatii, though ſupreme judge of the empire by virtue of his office, could not ſubſcribe his name. Noveau Traité de Diplomatique par deux Benedictins 4to. tom. ii. p. 422. As late as the fourteenth century Du Gueſclin, conſtable of France, the greateſt man in the ſtate, and one of the greateſt men of his age, could neither read nor write. St. Palaye Memoires ſur l'ancienne Chevalerie, tit. ii. p. 82. Nor was this ignorance confined to laymen; the greater part of the clergy was not many degrees ſuperior to them in ſcience. Many dignified eccleſiaſtics could not ſubſcribe the canons of thoſe councils, in which they ſat as members. Nouv. Traité de Diplom. tom. ii. p. 424. One of the queſtions appointed by the canons to be put to perſons who were candidates for orders was this, 'Whether they could read the goſpels and epiſtles, and explain the ſenſe of them, at leaſt literally?' Regino Prumienſis ap. Bruck. Hiſt. Philoſ. v. iii. p. 631. Alfred the Great complained, that from the Humber to the Thames there was not a prieſt who underſtood the liturgy in his mother-tongue, or who could tranſlate the eaſieſt piece of Latin; and that from the Thames to the ſea, the eccleſiaſtics were ſtill more ignorant. Aſſerius de rebus geſtis Alfredi, ap. Camdeni Anglica, &c. p. 25. The ignorance of the clergy is quaintly deſcribed by an author of the dark

ages: "Potius dediti gulæ quam gloſſæ; potius colligunt libras quam legunt libros; libentius intuentur Martham quam Marcum; malunt legere in Salmone quam in Solomone." Alanus de Art. Predicat. ap. Lebeuf Diſſert. tom. ii. p. 21. To the obvious cauſes of ſuch univerſal ignorance, ariſing from the ſtate of government and manners, from the ſeventh to the eleventh century, we may add the ſcarcity of books during that period, and the difficulty of rendering them more common. The Romans wrote their books either on parchment or on paper made of the Egyptian papyrus. The latter being the cheapeſt, was of courſe the moſt commonly uſed. But after the Saracens conquered Egypt in the ſeventh century, the communication between that country and the people ſettled in Italy, or in other parts of Europe, was almoſt entirely broken off, and the papyrus was no longer in uſe among them. They were obliged, on that account, to write all their books upon parchment, and, as the price of that was high, books became extremely rare and of great value. We may judge of the ſcarcity of the materials for writing them from one circumſtance. There ſtill remain ſeveral manuſcripts of the eighth, ninth, and following centuries, written on parchment, from which ſome former writing had been eraſed, in order to ſubſtitute a new compoſition in its place. In this manner it is probable that ſeveral works of the ancients periſhed. A book of Livy or of Tacitus might be erazed, to make room for the legendary tale of a ſaint, or the ſuperſtitious prayers of a miſſal. Murat. Antiq. Ital. v. iii. p. 833. P. de Montfaucon affirms, that the greater part of the manuſcripts on parchment which he has ſeen, thoſe of an ancient date excepted, are written on parchment from which ſome former treatiſe had been erazed. Mem. de l'Acad. des Inſcript. tom. ix. p. 325. As the want of materials for writing is one reaſon why ſo many of the works of the ancients have periſhed, it accounts likewiſe for the ſmall number of manuſcripts of any kind, previous to the eleventh century, when they began to multiply from a cauſe which ſhall be mentioned. Hiſtor. Liter. de France, tom. vi. p. 6. Many circumſtances prove the ſcarcity of books during theſe ages. Private perſons ſeldom poſſeſſed any books whatever. Even monaſteries of conſiderable note had only one miſſal. Murat. Antiq. v. ix. p. 789. Lupus, abbot of Ferrieres, in a letter to the pope, A. D. 855, beſeeches him to lend him a copy of Cicero de Oratore and Quintilian's Inſtitutions, "for," ſays he, "although we have parts of thoſe books, there is no complete copy of them in all France." Murat. Ant. v. iii. p. 835. The price of books became ſo high, that perſons of a moderate fortune could not afford to purchaſe them. The counteſs of Anjou paid for a copy of the Homilies of Haimon, biſhop of Alberſtadt, two hundred ſheep, five quarters of wheat, and the ſame quantity of rye and millet. Hiſtoire Literaire de France par des Religieux Benedictins, tom. vii. p. 3. Even ſo late as the year 1471, when Louis XI. borrowed the works of Raſis, the Arabian phyſician, from the faculty of medicine in Paris, he not only depoſited in pledge a conſiderable quantity of plate, but was obliged to procure a nobleman to join

with him as ſurety in a deed, binding himſelf under a great forfeiture to reſtore it. Gabr. Naude Addit. a l'Hiſtoire de Louys XI. par Comines, edit. de Freſnoy, tom. iv. p. 281. Many curious circumſtances, with reſpect to the extravagant price of books in the middle ages, are collected by that induſtrious compiler, to whom I refer ſuch of my readers as deem this ſmall branch of literary hiſtory an object of curioſity. When any perſon made a preſent of a book to a church or a monaſtery, in which were the only libraries during ſeveral ages, it was deemed a donative of ſuch value, that he offered it on the altar *pro remedio animæ ſuæ*, in order to obtain the forgiveneſs of his ſins. Murat. vol. iii. p. 836. Hiſt. Lit. de France, tom. vi. p. 6. Nouv. Trait. du Diplomat. par deux Benedictins, 4to. tom. i. p. 481. In the eleventh century, the art of making paper, in the manner now become univerſal, was invented; by means of that, not only the number of manuſcripts increaſed, but the ſtudy of the ſciences was wonderfully facilitated. Murat. ib. p. 871. The invention of the art of making paper, and the invention of the art of printing, are two conſiderable events in literary hiſtory. It is remarkable that the former preceded the firſt dawning of letters and improvement in knowledge towards the cloſe of the eleventh century; the latter uſhered in the light which ſpread over Europe at the æra of the Reformation.

## NOTE XI. Sect. I. p. 23. [L].

All the religious maxims and practices of the dark ages are a proof of this. I ſhall produce one remarkable teſtimony in confirmation of it, from an author canonized by the church of Rome, St. Eloy, or Egidius, biſhop of Noyon, in the ſeventh century. "He is a good Chriſtian who comes frequently to church; who preſents the oblation which is offered to God upon the altar; who doth not taſte of the fruits of his own induſtry until he has conſecrated a part of them to God, who, when the holy feſtivals approach, lives chaſtely even with his own wife during ſeveral days, that with a ſafe conſcience he may draw near the altar of God; and who, in the laſt place, can repeat the Creed and the Lord's Prayer. Redeem then your ſouls from deſtruction, while you have the means in your power; offer preſents and tythes to churchmen; come more frequently to church; humbly implore the patronage of the ſaints; for, if you obſerve theſe things, you may come with ſecurity in the day of retribution to the tribunal of the eternal Judge, and ſay, "Give to us, O Lord, for we have given unto thee." Dacherii Spicelegium Vet. Script. v. ii. p. 94. The learned and judicious tranſlator of Dr. Moſheim's Eccleſiaſtical Hiſtory, to one of whoſe additional notes I am indebted for my knowledge of this paſſage, ſubjoins a very proper reflection: "We ſee here a large and ample deſcription of a good Chriſtian, in which there is not the leaſt mention of the love of God, reſignation to his will, obedience to his laws, or of juſtice, benevolence, and charity towards men." Moſh. Eccleſ. Hiſt. v. i. p. 324.

## NOTE XII. Sect. I. p. 24. [M].

That infallibility in all its determinations, to which the church of Rome pretends, has been attended with one unhappy conſequence. As it is impoſſible to relinquiſh any opinion, or to alter any practice which has been eſtabliſhed by authority that cannot err, all its inſtitutions and ceremonies muſt be immutable and everlaſting, and the church muſt continue to obſerve, in enlightened times, thoſe rites which were introduced during the ages of darkneſs and credulity. What delighted and edified the latter, muſt diſguſt and ſhock the former. Many of the rites obſerved in the Romiſh church appear manifeſtly to have been introduced by a ſuperſtition of the loweſt and moſt illiberal ſpecies. Many of them were borrowed, with little variation, from the religious ceremonies eſtabliſhed among the ancient Heathens. Some were ſo ridiculous, that if every age did not furniſh inſtances of the faſcinating influence of ſuperſtition as well as of the whimſical forms which it aſſumes, it muſt appear incredible that they ſhould have been ever received or tolerated. In ſeveral churches of France, they celebrated a feſtival in commemoration of the Virgin Mary's flight into Egypt. It was called the feaſt of the Aſs. A young girl richly dreſſed, with a child in her arms, was ſet upon an aſs ſuperbly capariſoned. The aſs was led to the altar in ſolemn proceſſion. High maſs was ſaid with great pomp. The aſs was taught to kneel at proper places; a hymn no leſs childiſh than impious was ſung in his praiſe; and when the ceremony was ended, the prieſt, inſtead of the uſual words with which he diſmiſſed the people, brayed three times like an aſs, and the people, inſtead of the uſual reſponſe, We bleſs the Lord, brayed three times in the ſame manner. Du Cange, voc. *Feſtum*, v. iii. p. 424. This ridiculous ceremony was not, like the feſtival of fools, and ſome other pageants of thoſe ages, a mere farcical entertainment exhibited in a church, and mingled, as was then the cuſtom, with an imitation of ſome religious rites; it was an act of devotion, performed by the miniſters of religion, and by the authority of the church. However, as this practice did not prevail univerſally in the Catholic church, its abſurdity contributed at laſt to aboliſh it.

## NOTE XIII. Sect. I. p. 28. [N].

As there is no event in the hiſtory of mankind more ſingular than that of the Cruſades, every circumſtance that tends to explain or to give any rational account of this extraordinary frenzy of the human mind is intereſting. I have aſſerted in the text, that the minds of men were prepared gradually for the amazing effort which they made in conſequence of the exhortations of Peter the hermit, by ſeveral occurrences previous to his time. A more particular detail of this curious and obſcure part of hiſtory, may perhaps appear to ſome of my readers to be of importance. That the end of the world was expected about the cloſe of the tenth and beginning of the eleventh century; and that this occaſioned a general alarm, is evident from the authors to whom I have re-

ferred in the text. This belief was ſo univerſal and ſo ſtrong, that it mingled itſelf with civil tranſactions. Many charters, in the latter part of the tenth century, begin in this manner: "Appropinquante mundi termino," &c. As the end of the world is now at hand, and by various calamities and judgments the ſigns of its approach are now manifeſt. Hiſt. de Langued. par D.D. de Vic & Vaiſette. tom. ii. Preuves, p. 86, 89, 90, 117, 158, &c. One effect of this opinion was, that a great number of pilgrims reſorted to Jeruſalem, with a reſolution to die there, or to wait the coming of the Lord; kings, earls, marquiſſes, biſhops, and even a great number of women, beſides perſons of inferior rank, flocked to the Holy Land. Glaber. Rodulph. Hiſt. chez Bouquet Receuil, tom. x. p. 50, 52. Another hiſtorian mentions a vaſt cavalcade of pilgrims who accompanied the count of Angouleme to Jeruſalem in the year 1026. Chronic. Ademari, ibid. p. 162. Upon their return, theſe pilgrims filled Europe with lamentable accounts of the ſtate of Chriſtians in the Holy Land. Willerm. Tyr. Hiſt. ap. Gueſt. Dei per France, vol. ii. p. 636. Guibert. Abbat. Hiſt. ibid. vol. i. p. 476. Beſides this, it was uſual for many of the Chriſtian inhabitants of Jeruſalem, as well as of other cities in the Eaſt, to travel as mendicants through Europe; and by deſcribing the wretched condition of the profeſſors of the Chriſtian faith under the dominion of Infidels, to extort charity, and to excite zealous perſons to make ſome attempt in order to deliver them from oppreſſion. Baldrici Archiepiſcopi Hiſtor. ap. Geſta Dei, &c. vol. i. p. 86. In the year 986, Gerbert, archbiſhop of Ravenna, afterwards Pope Silveſter II. addreſſed a letter to all Chriſtians in the name of the church of Jeruſalem. It is eloquent and pathetic, and contains a formal exhortation to take arms againſt the Pagan oppreſſors, in order to reſcue the holy city from their yoke. Gerberti Epiſtolæ ap. Bouquet Receuil, tom. x. p. 426. In conſequence of this ſpirited call, ſome ſubjects of the republic of Piſa equipped a fleet, and invaded the territories of the Mahometans in Syria. Murat. Script. Rer. Italic. vol. iii. p. 400. The alarm was taken in the Eaſt, and an opinion prevailed, A. D. 1010, that all the forces of Chriſtendom were to unite, in order to drive the Mahometans out of Paleſtine. Chron. Ademari ap. Bouquet, tom. x. p. 152. It is evident from all theſe particulars, that the ideas which led the Cruſaders to undertake their wild enterprize did not ariſe, according to the deſcription of many authors, from a ſudden fit of frantic enthuſiaſm, but were gradually formed; ſo that the univerſal concourſe to the ſtandard of the croſs, when erected by Urban II. will appear leſs ſurpriſing.

If the various circumſtances which I have enumerated in this note, as well as in the hiſtory, are ſufficient to account for the ardour with which ſuch vaſt numbers engaged in ſuch a dangerous undertaking, the extenſive privileges and immunities granted to the perſons who aſſumed the croſs, ſerve to account for the long continuance of this ſpirit in Europe. 1. They were exempted from proſecutions on account of debt, during the time of their being engaged in this holy ſervice. Du Cange voc. *Crucis privilegium*,

v. ii. p. 1194.—2. They were exempted from paying intereſt for the money which they had borrowed, in order to fit them for this ſacred warfare. Ibid.—3. They were exempted either entirely, or at leaſt during a certain time, from the payment of taxes. Ibid. Ordonnances des Rois de France, tom. i. p. 33.—4. They might alienate their lands without the conſent of the ſuperior lord of whom they held. Ibid.—5. Their perſons and effects were taken under the protection of St. Peter, and anathemas of the church were denounced againſt all who ſhould moleſt them, or carry on any quarrel or hoſtility againſt them, during their abſence, on account of the holy war. Du Cange, Ibid. Guibertus Abbas ap. Bongarſ. i. p. 480. 482.—6. They enjoyed all the privileges of eccleſiaſtics and were not bound to plead in any civil court but were declared ſubject to the ſpiritual juriſdiction alone. Du Cange, Ib. Ordon. des Rois. tom. i. p. 34, 174.—7. They obtained a plenary remiſſion of all their ſins, and the gates of heaven were ſet open to them, without requiring any other proof of their penitence, but their engaging in this expedition; and thus, by gratifying their favourite paſſion, the love of war, they ſecured to themſelves civil rights of great value, and religious immunities, which were not uſually obtained, but by paying large ſums of money, or by undergoing painful penances. Guibert. Abbas, p. 480. When we behold the civil and eccleſiaſtical powers vying with each other, and ſtraining their invention in order to deviſe expedients for encouraging and adding ſtrength to the ſpirit of ſuperſtition, can we be ſurpriſed that it ſhould become ſo general as to render it infamous, and a mark of cowardice, to decline engaging in the holy war? Willierm Tyrienſis ap. Bongarſ. vol. ii. p. 641. The hiſtories of the Cruſades, written by modern authors, who are apt to ſubſtitute the ideas and maxims of their own age in the place of thoſe which influenced the perſons whoſe actions they attempt to relate, convey a very imperfect notion of the ſpirit at that time predominant in Europe. The original hiſtorians, who were animated themſelves with the ſame paſſions which poſſeſſed their contemporaries, exhibit to us a more ſtriking picture of the times and manners which they deſcribe. The enthuſiaſtic rapture with which they account for the effects of the pope's diſcourſe in the council of Clermont; the exultation with which they mention the numbers who devoted themſelves to this holy warfare; the confidence with which they expreſs their reliance on the divine protection; the extaſy of joy with which they deſcribe their taking poſſeſſion of the holy city, will enable us to conceive, in ſome degree, the extravagance of that zeal which agitated the minds of men with ſuch violence, and will ſuggeſt as many ſingular reflections to a philoſopher, as any occurence in the hiſtory of mankind. It is unneceſſary to ſelect the particular paſſages in the ſeveral hiſtorians, which confirm this obſervation. But leſt thoſe authors may be ſuſpected of adorning their narrative with any exaggerated deſcription, I ſhall appeal to one of the leaders who conducted the enterprize. There is extant a letter from Stephen, the earl of Chartres and Blois, to Adela his wife,

in which he gives her an account of the progreſs of the Cruſaders. He deſcribes the Cruſaders as the choſen army of Chriſt, as the ſervants and ſoldiers of God, as men who marched under the immediate protection of the Almighty, being conducted by his hand to victory and conqueſt. He ſpeaks of the Turks as accurſed, ſacrilegious, and devoted by Heaven to deſtruction: and when he mentions the ſoldiers in the Chriſtian army, who had died, or were killed, he is confident that their ſouls were admitted directly into the joys of Paradiſe. Dacherii Spicelegium, vol. iv. p. 257.

The expence of conducting numerous bodies of men from Europe to Aſia, muſt have been exceſſive, and the difficulty of raiſing the neceſſary ſums muſt have been proportionally great, during ages when the public revenues in every nation of Europe were extremely ſmall. Some account is preſerved of the expedients employed by Humbert II. Dauphin of Vienne, in order to levy the money requiſite towards equipping him for the Cruſade, A. D. 1346. Theſe I ſhall mention, as they tend to ſhew the conſiderable influence which the Cruſades had, both on the ſtate of property, and of civil government. 1. He expoſed to ſale part of his domains; and as the price was deſtined for ſuch a ſacred ſervice, he obtained the conſent of the French king, of whom theſe lands were held, ratifying the alienation. Hiſt de Dauphine, tom. i. p. 332, 335.—2. He iſſued a proclamation, in which he promiſed to grant new privileges to the nobles, as well as new immunities to the cities and towns, in his territories, in conſideration of certain ſums which they were inſtantly to pay on that account. Ibid. tom. ii. p. 512. Many of the charters of community, which I ſhall mention in another Note, were obtained in this manner.—3 He exacted a contribution towards defraying the charges of the expedition from all his ſubjects, whether eccleſiaſtics or laymen, who did not accompany him in perſon to the Eaſt. Ibid. tom. i. p. 335. 4. He appropriated a conſiderable part of his uſual revenues for the ſupport of the troops to be employed in this ſervice. Ibid. tom. ii. p. 518.—5. He exacted conſiderable ſums not only of the Jews ſettled in his dominions, but alſo of the Lombards and other bankers who had fixed their reſidence there. Ibid. tom. i. p. 338. tom. ii. 528. Notwithſtanding the variety of their reſources, the dauphin was involved in ſuch expence by this expedition, that on his return he was obliged to make new demands on his ſubjects, and to pillage the Jews by freſh exactions. Ibid. tom. i. p. 344, 347. When the count de Foix engaged in the firſt Cruſade, he raiſed the money neceſſary for defraying the expences of that expedition, by alienating part of his territories. Hiſt. de Langued. par D. D. de Vic & Vaiſette, tom. ii. p. 287. In like manner Baldwin, count of Hainaut, mortgaged or ſold a conſiderable portion of his dominions to the biſhop of Leige, A. D. 1076. Du Mont Corps Diplomatique, tom. i. p. 59. At a later period, Baldwin, count of Namur, ſold part of his eſtate to a monaſtery, when he intended to aſſume the croſs, A. D. 1239. Miræi Oper. i. 313.

## NOTE XIV. Sect. I. p. 32. [O].

The uſual method of forming an opinion concerning the comparative ſtate of manners in two different nations, is by attending to the facts which hiſtorians relate concerning each of them. Various paſſages might be ſelected from the Byzantin hiſtorians, deſcribing the ſplendour and magnificence of the Greek empire. P. de Montfaucon has produced from the writings of St. Chryſoſtom a very full account of the elegance and luxury of the Greeks in his age. That father in his ſermons enters into ſuch minute details concerning the manners and cuſtoms of his contemporaries, as appear ſtrange in diſcourſes from the pulpit. P. de Montfaucon has collected theſe deſcriptions, and ranged them under different heads. The court of the more early Greek emperors ſeems to have reſembled thoſe of Eaſtern monarchs, both in magnificence and in corruption of manners. The emperors in the eleventh century, though inferior in power, did not yield to them in oſtentation and ſplendour. Memoires de l'Acad. des Inſcrip. tom. xx. p. 197.——But we may decide concerning the comparative ſtate of manners in the eaſtern empire, and among the nations in the weſt of Europe by another method, which, if not more certain, is at leaſt more ſtriking. As Conſtantinople was the place of rendezvous for all the armies of the Cruſaders this brought together the people of the Eaſt and Weſt as to one great interview. There are extant ſeveral contemporary authors both among the Greeks and Latins, who were witneſſes of this ſingular congreſs of people, formerly ſtrangers, in a great meaſure, to each other. They deſcribe with ſimplicity and candour, the impreſſion which that new ſpectacle made upon their own minds. This may be conſidered as a moſt lively and juſt picture of the real character and manners of each people. When the Greeks ſpeak of the Franks, they deſcribe them as barbarians, fierce illiterate, impetuous and ſavage. They aſſume a tone of ſuperiority, as a more poliſhed people, acquainted with the arts both of government and of elegance, of which the other was ignorant. It is thus Anna Comnena deſcribes the manners of the Latins, Alexias, p. 224, 231, 237. ap. Byz. Script. vol. xi. She always views them with contempt as a rude people, the very mention of whoſe names was ſufficient to contaminate the beauty and elegance of hiſtory, p. 229. Nicetas Choniatus inveighs againſt them with ſtill more violence, and gives an account of their ferocity and devaſtations, in terms not unlike thoſe which preceding hiſtorians had employed in deſcribing the incurſions of the Goths and Vandals. Nicet. Chon. ap. Byz. Script. vol. iii. p. 302, &c. But on the other hand, the Latin hiſtorians were ſtruck with aſtoniſhment at the magnificence, wealth, and elegance which they diſcovered in the eaſtern empire. "O what a vaſt city is Conſtantinople (exclaims Fulcherius Carnotenſis, when he firſt beheld it), and how beautiful! How many monaſteries are there in it, and how many palaces built with wonderful art! How many manufactures are there in the city amazing to behold! It would be aſtoniſhing

to relate how it abounds with all good things, with gold, ſilver and ſtuffs of various kinds; for every hour ſhips arrive in its port laden with all things neceſſary for the uſe of man." Fulcher. ap. Bongarſ. vol. i. p. 386. Willermus archbiſhop of Tyre, the moſt intelligent hiſtorian of the Cruſades, ſeems to be fond on every occaſion of deſcribing the elegance and ſplendour of the court of Conſtantinople, and adds, that what he and his countrymen obſerved there exceeded any idea which they could have formed of it, noſtrarum enim rerum modum & dignitatem excedunt. Willerm. Tyr. ap. Bong. vol. ii. p. 657, 664. Benjamin the Jew, of Tudela in Navarre, who began his travels A. D. 1173, appears to have been equally aſtoniſhed at the magnificence of that city, and gives a deſcription of its ſplendour, in terms of high admiration. Benj. Tudel. chez les Voyages faits en 12, 13, &c. Siecles, par Bergeron, p. 10, &c. Guntherus, a French monk, who wrote a hiſtory of the conqueſt of Conſtantinople by the Cruſaders in the thirteenth century, ſpeaks of the magnificence of that city in the ſame tone of admiration: "Structuram autem ædificiorum in corpore civitatis, in eccleſiis videlicet, & turribus, & in domibus magnatorum, vix ullus vel deſcribere poteſt, vel credere deſcribenti, niſi qui ea oculata fide cognoverit." Hiſt. Conſtantinop. ap. Caniſii Lectiones Antiquas, fol. Antw. 1725. vol. iv. p 14. Geoffrey de Villehardouin, a nobleman of high rank, and accuſtomed to all the magnificence then known in the Weſt, deſcribes in ſimilar terms, the aſtoniſhment and admiration of ſuch of his fellow-ſoldiers as beheld Conſtantinople for the firſt time: "They could not have believed, ſays he, that there was a city ſo beautiful and ſo rich in the whole world. When they viewed its high walls, its lofty towers, its rich palaces, its ſuperb churches, all appeared ſo great, that they could have formed no conception of this ſovereign city, unleſs they had ſeen it with their own eyes." Hiſtoire de la Conquete de Conſtat. p. 49. From theſe undiſguiſed repreſentations of their own feelings, it is evident that to the Greeks, the Cruſaders appeared to be a race of rude, unpoliſhed barbarians; whereas the latter, how much ſoever they might contemn the unwarlike character of the former, could not help regarding them as far ſuperior to themſelves in elegance and arts. —That the ſtate of government and manners were much more improved in Italy than in the other countries of Europe, is evident not only from the facts recorded in hiſtory, but it appears that the more intelligent leaders of the Cruſaders were ſtruck with the difference. Jacobus de Vitriaco, a French hiſtorian of the holy war, makes an elaborate panegyric on the character and manners of the Italians. He views them as a more poliſhed people, and particularly celebrates them for their love of liberty, and civil wiſdom; "in conſiliis circumſpecti, in re ſua publica procuranda diligentes & ſtudioſi; ſibi in poſterum providentes; aliis ſubjici renuentes; ante omnia libertatem ſibi defendentes; ſub uno quem eligunt capitaneo, communitati ſuæ jura & inſtituta dictantes & ſimiliter obſervantes." Hiſtor. Hieroſol. ap. Geſta Dei per Francos, vol. ii. p. 1085.

Note XV. Sect. I. p. 35. [P].

The different ſteps taken by the cities of Italy in order to extend their power and dominions are remarkable. As ſoon as their liberties were eſtabliſhed, and they began to feel their own importance, they endeavoured to render themſelves maſters of the territory round their walls. Under the Romans, when cities enjoyed municipal privileges and juriſdiction, the circumjacent lands belonged to each town, and were the property of the community. But as it was not the genius of the feudal policy to encourage cities, or to ſhew any regard for their poſſeſſions and immunities, theſe lands had been ſeized, and ſhared among the conquerors. The barons to whom they were granted, erected their caſtles, almoſt at the gates of the city, and exerciſed their juriſdiction there. Under pretence of recovering their ancient property, many of the cities in Italy attacked theſe troubleſome neighbours, and diſpoſſeſſing them, annexed their territories to the communities, and made thereby a conſiderable addition to their power. Several inſtances of this occur in the eleventh, and beginning of the twelfth centuries. Murat. Antiq. Ital. vol. iv. p. 159, &c. Their ambition increaſing together with their power, the cities afterwards attacked ſeveral barons ſituated at a greater diſtance from their walls, and obliged them to engage that they would become members of their community; that they would take the oath of fidelity to their magiſtrates; that they would ſubject their lands to all burdens and taxes impoſed by common conſent; that they would defend the community againſt all its enemies; and that they would reſide within the city during a certain ſpecified time in each year. Murat. ibid. 163. This ſubjection of the nobility to the municipal government eſtabliſhed in cities, became almoſt univerſal, and was often extremely grievous to perſons accuſtomed to conſider themſelves as independent. Otto Friſingenſis thus deſcribes the ſtate of Italy under Frederick I. "The cities ſo much affect liberty, and are ſo ſolicitous to avoid the inſolence of power, that almoſt all of them have thrown off every other authority, and are governed by their own magiſtrates. Inſomuch that all that country is now filled with free cities, moſt of which have compelled their biſhops to reſide within their walls, and there is ſcarcely any nobleman, how great ſoever his power may be, who is not ſubject to the laws and government of ſome city." De Geſtis Frider. i. Imp. lib. ii. c. 13. p. 453. In another place he obſerves of the Marquis of Montſerrat, that he was almoſt the only Italian baron who had preſerved his independence, and had not become ſubject to the laws of any city. See alſo Muratori Antichita Eſtenſi, vol. i. p. 411, 412. That ſtate into which ſome of the nobles were compelled to enter, others embraced from choice. They obſerved the high degree of ſecurity, as well as of credit and eſtimation, which the growing wealth and dominion of the great communities procured to all the members of them. They were deſirous to partake of theſe, and to put themſelves under ſuch powerful protection. With this view they voluntarily became citizens of the towns to which their lands were moſt con-

tiguous; and abandoning their ancient caſtles, took up their reſidence in the cities at leaſt during part of the year. Several deeds are ſtill extant, by which ſome of the moſt illuſtrious families in Italy are aſſociated as citizens of different cities. Murat. ib. p. 165, &c. A charter, by which Atto de Macerata is admitted as a citizen of Oſimo, A. D. 1198, in the Marcha di Ancona, is ſtill extant. In this he ſtipulates, that he will acknowledge himſelf to be a burgeſs of that community; that he will to the utmoſt of his power promote its honour and welfare; that he will obey its magiſtrates; that he will enter into no leagues with its enemies; that he will reſide in the town during two months in every year, or for a longer time, if required by the magiſtrates. The community, on the other hand, take him, his family, and friends, under their protection, and engage to defend him againſt every enemy. Fr. Ant. Zacharias Anecdota medii Ævi. Aug. Taur. 1755. fol. p. 66. This privilege was deemed ſo important, that not only laymen, but eccleſiaſtics of the higheſt rank, condeſcended to be adopted as members of the great communities, in hopes of enjoying the ſafety and dignity which that condition conferred. Murat. ib. 179. Before the inſtitution of communities, perſons of noble birth had no other reſidence but their caſtles. They kept their petty courts there; and the cities were deſerted, having hardly any inhabitants but ſlaves, or perſons of low condition. But in conſequence of the practice which I have mentioned, cities not only became more populous, but were filled with inhabitants of better rank, and a cuſtom which ſtill ſubſiſts in Italy was then introduced, that all families of diſtinction reſide more conſtantly in the great towns, than is uſual in other parts of Europe. As cities acquired new conſideration and dignity by the acceſſion of ſuch citizens, they became more ſolicitous to preſerve their liberty and independence. The emperors, as ſovereigns, had anciently a palace in almoſt every great city of Italy; when they viſited that country they were accuſtomed to reſide in theſe palaces, and the troops which accompanied them were quartered in the houſes of the citizens. This the citizens deemed both ignominious and dangerous. They could not help conſidering it as receiving a maſter and an enemy within their walls. They laboured therefore to get free of this ſubjection. Some cities prevailed on the emperors to engage that they would never enter their gates, but take up their reſidence without the walls: Chart. Hen. IV. Murat. ib. p. 24. Others obtained the Imperial licence to pull down the palace ſituated within their liberties, on condition that they build another in the ſuburbs for the occaſional reception of the emperor. Chart. Hen. IV. Murat. ib. p. 25. Theſe various encroachments of the Italian cities alarmed the emperors, and put them on ſchemes for re-eſtabliſhing the Imperial juriſdiction over them on its ancient footing. Frederick Barbaroſſa engaged in this enterprize with great ardour. The free cities of Italy joined together in a general league, and ſtood on their defence: and after a long conteſt, carried on with alternate ſucceſs, a ſolemn treaty of peace was concluded at Conſtance,

A. D. 1183, by which all the privileges and immunities granted by former emperors to the principal cities in Italy were confirmed and ratified. Murat. Diſſert. XLVIII. This treaty of Conſtance was conſidered as ſuch an important article in the juriſprudence of the middle ages, that it is uſually publiſhed together with the Libri Feudorum at the end of the Corpus Juris Civilis. The treaty ſecured privileges of great importance to the confederate cities, and though it reſerved a conſiderable degree of authority and juriſdiction to the empire, yet the cities perſevered with ſuch vigour in their efforts in order to extend their immunities, and the conjunctures in which they made them were ſo favourable, that, before the concluſion of the thirteenth century, moſt of the great cities in Italy had ſhaken off all marks of ſubjection to the empire, and were become independent ſovereign republics. It is not requiſite that I ſhould trace the various ſteps by which they advanced to this high degree of power ſo fatal to the empire, and ſo beneficial to the cauſe of liberty in Italy. Muratori, with his uſual induſtry, has collected many original papers which illuſtrate this curious and little known part of hiſtory. Murat. Antiq. Ital. Diſſert. L. See alſo Jo. Bapt. Villanovæ Hiſt. Laudis Pompeii ſive Lodi, in Græv. Theſ. Antiquit. Ital. vol. iii p. 888.

Note XVI. Sect. I. p. 36. [Q.]

Long before the inſtitution of communities in France, charters of immunity or franchiſe were granted to ſome towns and villages by the lords on whom they depended. But theſe are very different from ſuch as became common in the twelfth and thirteenth centuries. They did not erect theſe towns into corporations; they did not eſtabliſh a municipal government; they did not grant them the privilege of bearing arms. They contained nothing more than a manumiſſion of the inhabitants from the yoke of ſervitude; an exemption from certain ſervices which were oppreſſive and ignominious; and the eſtabliſhment of a fixed tax or rent which the citizens were to pay to their lord in place of impoſitions which he could formerly lay upon them at pleaſure. Two charters of this kind to two villages in the county of Rouſillon, one in A. D. 974, the other in A. D. 1025, are ſtill extant. Petr. de Marca, *Marca*, ſive Limes Hiſpanicus, App. p. 909, 1038. Such conceſſions, it is probable, were not unknown in other parts of Europe, and may be conſidered as a ſtep towards the more extenſive privileges conferred by Louis le Gros, on the towns within his domains. The communities in France never aſpired to the ſame independence with thoſe in Italy. They acquired new privileges and immunities, but the right of ſovereignty remained entire to the king or baron within whoſe territories the reſpective cities were ſituated, and from whom they receive the charter of their freedom. A great number of theſe charters, granted both by the kings of France, and by their great vaſſals, are publiſhed by M. D'Achery in his Spicelegium, and many are found in the collection of the Ordonnances des Rois de France. Theſe convey a very ſtriking repreſentation of the wretched condition of cities pre-

vious to the inſtitution of communities, when they were ſubject to the judges appointed by the ſuperior lords of whom they held, and who had ſcarcely any other law but their will. Each conceſſion in theſe charters muſt be conſidered as a grant of ſome new privilege which the people did not formerly enjoy, and each regulation as a method of redreſſing ſome grievance under which the inhabitants of cities formerly laboured. The charters of communities contain likewiſe the firſt expedients employed for the introduction of equal laws and regular government. On both theſe accounts they merit particular attention, and therefore, inſtead of referring my readers to the many bulky volumes in which they are ſcattered, I ſhall give them a view of ſome of the moſt important articles in theſe charters, ranged under two general heads. I. Such as reſpect perſonal ſafety. II. Such as reſpect the ſecurity of property.

I. During that ſtate of turbulence and diſorder which the corruption of the feudal government introduced into Europe, perſonal ſafety was the firſt and great object of every individual; and as the great military barons alone were able to give ſufficient protection to their vaſſals, this was one great ſource of their power and authority. But, by the inſtitution of communities, effectual proviſion was made for the ſafety of individuals, independent of the nobles. For, 1. The fundamental article in every charter was, that all the members of the community, bound themſelves by an oath to aſſiſt, defend, and ſtand by each other againſt all aggreſſors, and that they ſhould not ſuffer any perſon to injure, diſtreſs, or moleſt any of their fellow citizens. D'Acher. Spicel. x. 642. xi. 241. &c.—2. Whoever reſided in any town, which was made free, was obliged, under a ſevere penalty, to accede to the community, and to take part in the mutual defence of its members. D'Acher. Spic. xi. 344.—3. The communities had the privilege of carrying arms; of making war on their private enemies; and of executing by military force any ſentence which their magiſtrates pronounced. D'Ach. Spicel. x. 643, 644. xi. 343.—4. The practice of making ſatisfaction by a pecuniary compenſation for murder, aſſault, or other acts of violence, moſt inconſiſtent with the order of ſociety, and the ſafety of individuals, was aboliſhed; and ſuch as committed theſe crimes were puniſhed capitally, or with rigour adequate to their guilt. D'Ach. xi. 362. Miræi Opera Diplomatica, i. 292.—5. No member of a community was bound to juſtify or defend himſelf by battle or combat; but, if he was charged with any crime, he could be convicted only by the evidence of witneſſes, and the regular courſe of legal proceedings. Miræus, ibid. D'Ach. xi. 375, 349. Ordon. tom. iii. 265—6. If any man ſuſpected himſelf to be in danger from the malice or enmity of another, upon his making oath to that effect before a magiſtrate, the perſon ſuſpected was bound under a ſevere penalty to give ſurety for his peaceable behaviour. D'Ach. xi. 346. This is the ſame ſpecies of ſecurity which is ſtill know in Scotland under the name of *Lawburrows*. In France, it was firſt introduced among the inhabitants of communities, and having been found to contribute conſiderably towards perſonal

ſafety, it was extended to all the other members of ſociety. Eſtabliſſemens de St. Louis. liv. i. cap. 28. ap. Du Cange Vie de St. Louis, p. 15.

II. The proviſions in the charters of communities concerning the ſecurity of property, are not leſs conſiderable than thoſe reſpecting perſonal ſafety. By the ancient law of France, no perſon could be arreſted or confined in priſon on account of any private debt. Ordon. des Rois de France, tom i. p. 72—80. If any perſon was arreſted upon any pretext, but his having been guilty of a capital crime, it was lawful to reſcue him out of the hands of the officers who had ſeized him. Ordon. iii. p. 17. Freedom from arreſt on account of debt ſeems likewiſe to have been enjoyed in other countries. Gudenus Sylloge Diplom. 473. In ſociety, while it remained in its rudeſt and moſt ſimple form, debt ſeems to have been conſidered as an obligation merely perſonal. Men had made ſome progreſs towards refinement, before creditors acquired a right of ſeizing the property of their debtors in order to recover payment. The expedients for this purpoſe were all introduced originally in communities, and we can trace the gradual progreſs of them. 1. The ſimpleſt and moſt obvious ſpecies of ſecurity was, that the perſon who ſold any commodity ſhould receive a pledge from him who bought it, which he reſtored upon receiving payment. Of this cuſtom there are veſtiges in ſeveral charters of community. D'Ach. ix. 185. xi. 377—2. When no pledge was given, and the debtor became refractory or inſolvent, the creditor was allowed to ſeize his effects with a ſtrong hand, and by his private authority; the citizens of Paris are warranted by the royal mandate; "ut ubicumque, et quocumque modo poterunt, tantum capiant, unde pecuniam ſibi debitam integre & plenarie habeant, & inde ſibi invicem adjutores exiſtant." Ordon. &c. tom. i p. 6. This rude practice, ſuitable only to the violence of that which has been called a ſtate of nature, was tolerated longer than one can conceive to be poſſible in any ſociety where laws and order were at all known. The ordonnance authoriſing it was iſſued, A. D. 1134: and that which corrects the law, and prohibits creditors from ſeizing the effects of their debtors, unleſs by a warrant from a magiſtrate, and under his inſpection, was not publiſhed until the year 1351. Ordon. tom. ii. p. 438. It is probable, however, that men were taught, by obſerving the diſorders which the former mode of proceeding occaſioned, to correct it in practice long before a remedy was provided by a law to that effect. Every diſcerning reader will apply this obſervation to many other cuſtoms and practices which I have mentioned. New cuſtoms are not always to be aſcribed to the laws which authorize them. Thoſe ſtatutes only give a legal ſanction to ſuch things as the experience of mankind has previouſly found to be proper and beneficial.—3. As ſoon as the interpoſition of the magiſtrate became requiſite, regular proviſion was made for attaching or diſtraining the moveable effects of a debtor; and if his moveable were not ſufficient to diſcharge the debt, his immoveable property, or eſtate in land, was liable to

the ſame diſtreſs, and was ſold for the benefit of his creditor. D'Ach. ix. p. 184, 185. xi. p. 348—380. As this regulation afforded the moſt complete ſecurity to the creditor, it was conſidered as ſo ſevere, that humanity pointed out ſeveral limitations in the execution of it. Creditors were prohibited from ſeizing the wearing apparel of their debtors, their beds, the door of their houſe, their inſtruments of huſbandry, &c. D'Ach. ix. 184. xi. 377. Upon the ſame principles, when the power of diſtraining effects became more general, the horſe and arms of a gentleman could not be ſeized. D'Ach. ix. 185. As hunting was the favourite amuſement of martial nobles, the emperor Lodovicus Pius prohibited the ſeizing of a hawk, on account of any compoſition or debt. Capitul. lib. iv. § 21. But if the debtor had no other moveables, even theſe privileged articles might be ſeized.—4. In order to render the ſecurity of property complete within a community, every perſon who was admitted a member of it, was obliged to buy or build a houſe, or to purchaſe lands within its precincts, or at leaſt to bring into the town a conſiderable portion of his moveables, *per quæ juſticiari poſſit, ſi quid forte in eum querelæ evenerit.* D'Ach xi. 326. Ordon. i. 367. Libertates S. Georgii de Eſperanchia. Hiſt. de Dauphinè, tom i. p. 26.—5. That ſecurity might be as perfect as poſſible in ſome towns, the members of the community ſeem to have been bound for each other. D'Ach. x. 644.—6. All queſtions with reſpect to property were tried within the community, by magiſtrates and judges whom the citizens elected or appointed. Their deciſions were more equal and fixed than the ſentences which depended on the capricious and arbitrary will of a baron, who thought himſelf ſuperior to all laws. D'Ach. x. 644, 646 xi. 344 & paſſim. Ordon. iii. 204—7. No member of a community could be burdened by any arbitrary tax; for the ſuperior lord, who granted the charter of community, accepted of a fixed cenſus or duty in lieu of all demands. Ordon. tom. iii. 204. Libertates de Calma Hiſt. de Dauphinè, tom. i. p. 19. Libert. St. Georgii de Eſperanchia, ibid. p. 26. Nor could the members of a community be diſtreſſed by an unequal impoſition of the ſum to be levied on the community. Regulations are inſerted in the charters of ſome communities, concerning the method of determining the quota of any tax to be levied on each inhabitant, D'Ach. xi. 350, 365. St. Louis publiſhed an ordonnance concerning this matter which extended to all the communities. Ordon. tom. i. 186. Theſe regulations are extremely favourable to liberty, as they veſt the power of proportioning the taxes in a certain number of citizens choſen out of each pariſh, who were bound by ſolemn oath to decide according to juſtice.—That the more perfect ſecurity of property was one great object of thoſe who inſtituted communites, we learn, not only from the nature of the thing, but from the expreſs words of ſeveral charters, of which I ſhall only mention that granted by Alienor Queen of England and Dutcheſs of Guienne, to the communitiy of Poitiers, "ut ſua propria melius defendere poſſint, & magis integre cuſtodire." Du Cange, voc. *Communia*, v. ii. p. 863.—Such are ſome of the capital regulations eſtabliſhed in commu-

nities during the twelfth and thirteenth centuries. Theſe may be conſidered as the firſt expedients for the re-eſtabliſhment of law and order, and contributed greatly to introduce regular government among all the members of ſociety. As ſoon as communities were inſtituted, high ſentiments of liberty began to manifeſt themſelves. When Humbert lord of Beaujeu, upon granting a charter of community to the town of Belleville, exacted of the inhabitants an oath of fidelity to himſelf and ſucceſſors, they ſtipulated on their part, that he ſhould ſwear to maintain their franchiſes and liberties; and, for their greater ſecurity, they obliged him to bring twenty gentlemen to take the ſame oath, and to be bound together with him. D'Ach. ix. 183. In the ſame manner the lord of Moriens in Dauphinè produced a certain number of perſons as his ſureties for the obſervation of the articles contained in the charter of community to that town. Theſe were bound to ſurrender themſelves priſoners to the inhabitants of Moriens, if their liege lord ſhould violate any of their franchiſes, and they promiſed to remain in cuſtody until he ſhould grant the members of the community redreſs. Hiſt. de Dauphinè, tom. i. p. 17. If the mayor or chief magiſtrate of a town did any injury to a citizen, he was obliged to give ſecurity for his appearance in judgment in the ſame manner as a private perſon; and if caſt, was liable to the ſame penalty. D'Ach. ix. 183. Theſe are ideas of equality uncommon in the feudal times. Communities were ſo favourable to freedom, that they were diſtinguiſhed by the name of *Libertates*. Du Cange, v. ii. p. 863. They were at firſt extremely odious to the nobles, who foreſaw what a check they muſt prove to their power and domination. Guibert Abbot of Nogent calls them execrable inventions, by which, contrary to law and juſtice, ſlaves withdrew themſelves from that obedience which they owed to their maſters. Du Cange, ib. 862. The zeal with which ſome of the nobles and powerful eccleſiaſtics oppoſed the eſtabliſhment of communities, and endeavoured to circumſcribe their privileges, was extraordinary. A ſtriking inſtance of this occurs in the conteſts between the archbiſhop of Reims, and the inhabitants of that community. It was the chief buſineſs of every archbiſhop, during a conſiderable time, to abridge the rights and juriſdiction of the community; and the great object of the citizens, eſpecially when the ſee was vacant, to maintain, to recover, and to extend their own juriſdiction. Hiſtoire civile & politique de la Ville de Reims, par M. Anquetil, tom. i. p. 287, &c.

The obſervations which I have made concerning the low ſtate of cities, and the condition of their inhabitants, are confirmed by innumerable paſſages in the hiſtorians and laws of the middle ages. It is not improbable, however, that ſome cities of the firſt order were in a better ſtate, and enjoyed a ſuperior degree of liberty. Under the Roman government, the municipal government eſtabliſhed in cities was extremely favourable to liberty. The juriſdiction of the ſenate in each corporation, and the privileges of the citizens, were both extenſive. There is reaſon to believe, that ſome of the greater cities which eſcaped the deſtructive

rage of the barbarous nations, ſtill retained their ancient form of government, at leaſt in a great meaſure. They were governed by a council of citizens, and by magiſtrates whom they themſelves elected. Very ſtrong preſumptions in favour of this opinion are produced by M. l'Abbe De Bos, Hiſt. Crit. de la Mon. Franc. tom. i. p. 18, &c. tom. ii. p. 524. edit. 1742. It appears from ſome of the charters of community to cities, granted in the twelfth and thirteenth centuries, that theſe only confirm the privileges poſſeſſed by the inhabitants previous to the eſtabliſhment of the community. D'Acher. Spiceleg. vol. xi. p. 345. Other cities claimed their privileges, as having poſſeſſed them without interruption from the times of the Romans. Hiſt. Crit. de la Mon. Franc. tom. ii. p. 333. But the number of cities which enjoyed ſuch immunities was ſo ſmall, as hardly in any degree to diminiſh the force of my concluſions in the text.

Note XVII. Sect. I. p. 36. [R.]

Having given a full account of the eſtabliſhment as well as effects of communities in Italy and France, it will be neceſſary to inquire with ſome attention into the progreſs of cities and municipal government in Germany. The ancient Germans had no cities. Even in their hamlets or villages they did not build their houſes contiguous to each other. Tac. de Mor. Germ. cap. 16. They conſidered it as a badge of ſervitude to be obliged to dwell in a city ſurrounded with walls. When one of their tribes had ſhaken of the Roman yoke, their countrymen required of them, as an evidence of their having recovered liberty, to demoliſh the walls of a town which the Romans had built in their country. Even the fierceſt animals, ſaid they, loſe their ſpirit and courage when they are confined. Tac. Hiſtor. lib. iv. c. 64. The Romans built ſeveral cities of note on the banks of the Rhine. But in all the vaſt countries from that river to the coaſts of the Baltic, there was hardly one city previous to the ninth century of the Chriſtian æra. Conringius Exercitatio de Urbibus Germaniæ, Oper. vol. i. § 25, 27, 31, &c. Heineccius differs from Conringius with reſpect to this. But even, after allowing to his arguments and authorities their utmoſt force, they prove only, that there were a few places in thoſe extenſive regions on which ſome hiſtorians have beſtowed the name of towns. Elem. Jur. German. lib. i. § 102. Under Charlemagne, and the emperors of his family, as the political ſtate of Germany began to improve, ſeveral cities were founded, and men became accuſtomed to aſſociate and to live together in one place. Charlemagne founded two archbiſhoprics and nine biſhoprics in the moſt conſiderable towns of Germany. Aub. Miræi Opera Diplomatica, vol. i. p. 16. His ſucceſſors increaſed the number of theſe; and as biſhops fixed their reſidence in the chief town of their dioceſe, and performed religious functions there, that induced many people to ſettle in them. Conring. ibid. § 48. But Henry ſirnamed the Fowler, who began his reign, A. D. 920, muſt be conſidered as the great founder of cities in Germany. The empire was at that time infeſted by the incurſions of the Hungarians and other barbarous

people. In order to oppoſe them, Henry encouraged his ſubjects to ſettle in cities which he ſurrounded with walls ſtrengthened by towers. He enjoined or perſuaded a certain proportion of the nobility to fix their reſidence in the towns, and thus rendered the condition of citizens more honourable than it had been formerly. Wittikindus Annal. lib i. ap. Conring. § 82. From this period the number of cities continued to increaſe, and they became more populous and more wealthy But cities in Germany were ſtill deſtitute of municipal liberty or juriſdiction. Such of them as were ſituated in the Imperial demeſnes were ſubject to the emperors. Their *Comites*, *Miſſi*, and other judges preſided in them and diſpenſed juſtice. Towns ſituated on the eſtate of a baron, were part of his fief, and he or his officers exerciſed a ſimilar juriſdiction in them. Conring. ibid. § 73, 74. Heinec. Elem. Jur. Germ. lib. i. § 104. The Germans borrowed the inſtitution of communities from the Italians. Knipſchildius Tractatus Politico. Hiſtor. Jurid. de Civitatum Imperialium Juribus, vol i. lib. i. cap. 5. No. 23. Frederick Barbaroſſa was the firſt emperor who, from the ſame political conſideration that influenced Lous le Gros, multiplied communities in order to abridge the power of the nobles. Pfeffel Abregé de l'Hiſtoire & du Droit Publique d'Allemagne, 4to. p. 297. From the reign of Henry the Fowler, to the time when the German cities acquired full poſſeſſion of their immunities, various circumſtances contributed to their increaſe. The eſtabliſhment of biſhoprics (already mentioned) and the building of cathedrals naturally induced many people to ſettle near the chief place of worſhip. It became the cuſtom to hold councils and courts of judicature of every kind, eccleſiaſtical as well as civil, in cities. In the eleventh century, many ſlaves were enfranchiſed, the greater part of whom ſettled in cities. Several mines were diſcovered and wrought in different provinces, which drew together ſuch a concourſe of people as gave riſe to ſeveral cities, and increaſed the number of inhabitants in others. Conring. § 105. The cities began in the thirteenth century to form leagues for their mutual defence, and for repreſſing the diſorders occaſioned by the private wars among the barons, as well as by their exactions. This rendered the condition of the inhabitants of cities more ſecure than that of any other order of men, and allured many to become members of their communities. Conring. § 94. There were inhabitants of three different ranks in the towns of Germany: the nobles, or familiæ; the citizens or liberi; and the artiſans, who were ſlaves, or hommes proprii. Knipſchild. lib. ii. cap. 29. No. 13. Henry V. who began his reign A. D. 1106, enfranchiſed the ſlaves who were artiſans or inhabitants in ſeveral towns, and gave them the rank of citizens or liberi. Pfeffel, p. 254. Knipſch. lib. ii. c. 29. No. 113, 119. Though the cities in Germany did not acquire liberty ſo early as thoſe in France, they extended their privileges much farther. All the imperial and free cities, the number of which is conſiderable, acquired the full right of being *immediate*; by which term, in the German juriſprudence, we are to underſtand, that they are ſubject to the em-

pire alone, and poſſeſs within their own precincts all the rights of complete and independent ſovereignty. The various privilges, of the Imperial cities, the great guardians of the Germanic liberties, are enumerated by Knipſchild. lib. ii. The moſt important articles are generally known, and it would be improper to enter into any diſquiſition concerning minute particulars.

## NOTE XVIII. Sect. I. p. 36. [S].

The Spaniſh hiſtorians are almoſt entirely ſilent concerning the origin and progreſs of communities in that kingdom; ſo that I cannot fix, with any degree of certainty, the time and manner of their firſt introduction there. It appears, however, from Mariana, vol. ii. p. 221. fol. Hagæ, 1736, that in the year 1359, eighteen cities had obtained a ſeat in the Cortes of Caſtile. From the account, which will be given of their conſtitution and pretenſions, Sect. III. of this volume, it appears that their privileges and form of government were the ſame with thoſe of the other feudal corporations; and this, as well as the perfect ſimilarity of political inſtitutions and tranſactions in all the feudal kingdoms, may lead us to conclude that communities were there introduced in the ſame manner, and probably about the ſame time, as in the other nations of Europe. In Aragon, as I ſhall have occaſion to obſerve in a ſubſequent note, cities ſeem early to have acquired extenſive immunities, together with a ſhare in the legiſlature. In the year 1118, the citizens of Saragoſſa had not only attained political liberty, but they were declared to be of equal rank with the nobles of the ſecond claſs; and many other immunities, unknown to perſons in their rank of life in other parts of Europe, were conferred upon them. Zurita Annales de Aragon, tom. i. p. 44. In England, the eſtabliſhment of communities or corporations was poſterior to the conqueſt. The practice was borrowed from France, and the privileges granted by the crown were perfectly ſimilar to thoſe which I have enumerated, but as this part of hiſtory is well known to moſt of my readers, I ſhall, without entering into any critical or minute diſcuſſion, refer them to authors who have fully illuſtrated this intereſting point in the Engliſh hitory. Brady's Treatiſe of Boroughs. Madox Firma Burgi, cap. i. ſect. ix. Hume's Hiſtory of England, vol. i. append. i. and ii. It is not improbable that ſome of the towns in England were formed into corporations under the Saxon kings, and that the charters granted by the kings of the Norman race were not charters of enfranchiſement from a ſtate of ſlavery, but a confirmation of privileges which they already enjoyed. See Lord Lyttelton's Hiſtory of Henry II vol. ii p. 317. The Engliſh cities, however, were very inconſiderable in the twelfth century. A clear proof of this occurs in the hiſtory to which I laſt referred. Fitzſtephen, a contemporary author, gives a deſcription of the city of London in the reign of Henry II. and the terms in which he ſpeaks of its trade, its wealth, and the ſplendour of its inhabitants, would ſuggeſt no inadequate idea of its ſtate at preſent, when it is the greateſt and moſt opulent city of Europe. But all ideas of grandeur and magnificence are merely comparative; and every deſcription

of them in general terms is very apt to deceive. It appears from Peter of Blois, archdeacon of London, who flouriſhed in the ſame reign, and who had good opportunity of being well informed, that this city of which Fitzſtephen gives ſuch a pompous account, contained no more than forty thouſand inhabitants. Ibid. 315. 316. The other cities were ſmall in proportion, and were not in a condition to extort any extenſive privileges. That the conſtitution of the boroughs in Scotland, in many circumſtances, reſembled that of the towns in France and England, is manifeſt from the Leges Burgorum, annexed to the Regiam Majeſtatum.

## NOTE XIX. Sect. I. p. 40. [T].

Soon after the introduction of the third eſtate into the national council, the ſpirit of liberty which that excited in France began to produce conſpicuous effects. In ſeveral provinces of France the nobility and communities formed aſſociations, whereby they bound themſelves to defend their rights and privileges againſt the formidable and arbitrary proceedings of the king. The Count de Boulainvilliers has preſerved a copy of one of theſe aſſociations, dated in the year 1314, twelve years after the admiſſion of the deputies from towns into the States General. Hiſtoire de l'ancien Gouvernement de la France, tom. ii. p. 94. The vigour with which the people aſſerted and prepared to maintain their rights, obliged their ſovereigns to reſpect them. Six years after this aſſociation Philip the Long iſſued a writ of ſummons to the community of Narbonne, in the following terms: "Philip, by the grace, &c. to our well-beloved, &c. "As we deſire with all our heart, and above all other things, to govern our kingdom and people in peace and tranquillity, by the help of God; and to reform our ſaid kingdom in ſo far as it ſtands in need thereof, for the public good, and for the benefit of our ſubjects, who in times paſt have been aggrieved and oppreſſed in divers manners by the malice of ſundry perſons, as we have learned by common report, as well as by the information of good men worthy of credit, and we having determined in our counſel which we have called to meet in our good city, &c. to give redreſs to the utmoſt of our power, by all ways and means poſſible, according to reaſon and juſtice, and willing that this ſhould be done with ſolemnity and deliberation by the advice of the prelates, barons, and good towns of our realm, and particularly of you, and that it ſhould be tranſacted agreeably to the will of God, and for the good of our people, therefore we command," &c. Mably, Obſervat. ii. App. p. 386. I ſhall allow theſe to be only the formal words of a public and legal ſtyle; but the ideas are ſingular, and much more liberal and enlarged than one could expect in that age. A popular monarch of Great Britain could hardly addreſs himſelf to parliament, in terms more favourable to public liberty. There occurs in the hiſtory of France a ſtriking inſtance of the progreſs which the principles of liberty had made in that kingdom, and of the influence which the deputies of towns had acquired in the States General. During the calamities in which the war with England, and the captivity of King John, had involved France, the States General

made a bold effort to extend their own privileges and juriſdiction. The regulations eſtabliſhed by the States, held A. D. 1355, concerning the mode of levying taxes, the adminiſtration of which they veſted not in the crown, but in commiſſioners appointed by the States; concerning the coining of money; concerning the redreſs of the grievance of purveyance; concerning the regular adminiſtration of juſtice; are much more ſuitable to the genius of a republican government than that of a feudal monarchy. This curious ſtatute is publiſhed, Ordon. t. iii. p. 19. Such as have not an opportunity to conſult that large collection, will find an abridgement of it in Hiſt. de France par Villaret, tom. ix. p. 130. or in Hiſtoire de Boulainv. tom. ii. 213. The French hiſtorians repreſent the biſhop of Laon, and Marcel provoſt of the merchants of Paris, who had the chief direction of this aſſembly, as ſeditious tribunes, violent, intereſted, ambitious, and aiming at innovations ſubverſive of the conſtitution and government of their country. That may have been the caſe, but theſe men poſſeſſed the confidence of the people; and the meaſures which they propoſed as the moſt popular and acceptable, as well as moſt likely to increaſe their own influence, plainly prove that the ſpirit of liberty had ſpread wonderfully, and that the ideas which then prevailed in France concerning government were extremely liberal. The States General held at Paris, A. D. 1355, conſiſted of about eight hundred members, and above one half of theſe were deputies from towns. M. Secouſe Preff. a Ordon. tom. iii. p. 48. It appears that in all the different aſſemblies of the States, held during the reign of John, the repreſentatives of towns had great influence, and in every reſpect the third State was conſidered as co-ordinate and equal to either of the other two. Ibid. paſſim. Theſe ſpirited efforts were made in France long before the houſe of Commons in England acquired any conſiderable influence in the legiſlature. As the feudal ſyſtem was carried to its utmoſt height in France ſooner than in England, ſo it began to decline ſooner in the former than in the latter kingdom. In England, almoſt all attempts to eſtabliſh or to extend the liberty of the people have been ſucceſsful; in France they have proved unfortunate. What were the accidental events, or political cauſes, which occaſioned this difference, it is not my preſent buſineſs to enquire.

## NOTE XX. Sect. I. p. 42. [U].

In a former Note, No. VIII. I have enquired into the condition of that part of the people which was employed in agriculture, and have repreſented the various hardſhips and calamities of their ſituation. When charters of liberty or manumiſſion were granted to ſuch perſons, they contained four conceſſions correſponding to the four capital grievances to which men in a ſtate of ſervitude are ſubject. 1. The right of diſpoſing of their perſons by ſale or grant was relinquiſhed. 2. Power was given to them of conveying their property and effects by will or any other legal deed. Or if they happened to die inteſtate, it was provided that their property ſhould go to their lawful heirs in the ſame manner as the pro-

perty of other perſons. 3. The ſervices and taxes which they owed to their ſuperior or liege lord which were formerly arbitrary and impoſed at pleaſure, are preciſely aſcertained. 4. They are allowed the privilege of marrying according to their own inclination; formerly they could contract no marriage without their lord's permiſſion, and with no perſon but one of his ſlaves. All theſe particulars are found united in the charter granted Habitatoribus Montis Britonis, A. D. 1376. Hiſt. de Dauphinè, tom. i. p. 81. Many circumſtances concurred with thoſe which I have mentioned in the text procuring them deliverance from that wretched ſtate. The gentle ſpirit of the Chriſtian religion; the doctrines which it teaches, concerning the original equality of mankind; its tenets with reſpect to the divine government, and the impartial eye with which the Almighty regards men of every condition, and admits them to a participation of his benefits, are all inconſiſtent with ſervitude. But in this, as in many other inſtances, conſiderations of intereſt, and the maxims of falſe policy, led men to a conduct inconſiſtent with their principles. They were ſo ſenſible, however, of this inconſiſtency, that to ſet their fellow Chriſtians at liberty from ſervitude was deemed an act of piety highly meritorious and acceptable to Heaven. The humane ſpirit of the Chriſtian religion ſtruggled long with the maxims and manners of the world, and contributed more than any other circumſtance to introduce the practice of manumiſſion. When pope Gregory the Great, who flouriſhed toward the end of the ſixth century, granted liberty to ſome of his ſlaves, he gives this reaſon for it, "Cum Redemptor noſter, totius conditor naturæ, ad hoc propitiatus humanam carnem voluerit aſſumere, ut divinitatis ſuæ gratia, dirempto (quo tenebamur captivi) vinculo, priſtinæ nos reſtitueret libertati; ſalubriter agitur, ſi homines, quos ab initio liberos natura protulit, & jus gentium jugo ſubſtituit ſervitutis, in ea, qua nati fuerant, manumittentis beneficio, libertati reddantur." Gregor. Magn. ap. Potgieſſ. lib. iv. c. i. § 3. Several laws or charters founded on reaſons ſimilar to this, are produced by the ſame author. Accordingly, a great part of the charters of manumiſſion, previous to the reign of Louis X. are granted pro amore Dei, pro remedio animæ, & pro mercede animæ. Murat. Antiq. Ital. vol. i. p. 849, 850. Du Cange, voc. *Manumiſſio*. The formality of manumiſſion was executed in a church, as a religious ſolemnity. The perſon to be ſet free was led round the great altar with a torch in his hand, he took hold of the horns of the altar, and there the ſolemn words conferring liberty were pronounced. Du Cange, ib vol iv. p. 467.

I ſhall tranſcribe a part of a charter of manumiſſion granted, A. D. 1056; both as it contains a full account of the ceremonies uſed in this form of manumiſſion, and as a ſpecimen of the imperfect knowledge of the Latin tongue in that barbarous age. It is granted by Willa the widow of Hugo the Duke and Marquis, in favour of Clariza one of her ſlaves. "Et ideo nos Domine Wille inclite cometiſſe—libera et abſolvo te Cleriza filia Uberto—pro timore omnipotentis Dei, & remedio luminarie anime bone memorie quondam ſupra ſcripto Domini Ugo glorioſſiſſimo, ut quan-

do illum Dominus de hac vita migrare, jusserit, pars iniqua non abeat potestatem ullam, sed angelus Domini nostri Jesu Christi colocare dignitur illum inter sanctos dilectos suos; & beatus Petrus princips apostolorum, qui habed potestatem omnium animarum ligandi et absolvendi, ut ipsi absolvat animæ ejus de peccatis sui, & aperiad illum janua paradisi; pro eadem vero rationi, in mano mite te Benzo presbiter, ut vadat tecum in ecclesia sancti Bartholomæi apostoli; traad de tribus vicibus circa altare ipsius ecclesiæ cum cæreo apprehensum in manibus tuis & manibus suis; deinde exite ambulate in via quadrubio, ubi quatuor vie se deviduntur. Statimq; pro remedio luminarie anime bone memorie quondam supra scripto Domini Ugo et ipsi presbiter Benzo fecit omnia, et dixit, ecce quatuor vie, ite et ambulate in quacunq; partem tibi placuerit, tam sic supra scripta Cleriza, qua nosque tui heredes, qui ab ac hora in antea nati, vel procreati fuerit utriusq; sexus, &c. Murat. ib. p. 853. Many other charters might have been selected, which, in point of grammar or style, are in noways superior to this. Manumission was frequently granted on death-bed or by latter-will. As the minds of men are at that time awakened to sentiments of humanity and piety, these deeds proceeded from religious motives, and were granted *pro redemptione animæ*, in order to obtain acceptance with God. Du Cange ubi supra, p. 470. & voc. *Servus*, vol. vi. p. 451. Another method of obtaining liberty was by entering into holy orders, or taking the vow in a monastery. This was permitted for some time, but so many slaves escaped, by this means, out of the hands of their masters, that the practice was afterwards restrained, and at last prohibited by the laws of almost all the nations of Europe. Murat. ib. p. 842. Conformably to the same principles, princes, on the birth of a son, or upon any other agreeable event, appointed a certain number of slaves to be enfranchised, as a testimony of their gratitude to God for that benefit. Marculfi Form. lib. i. cap. 39. There are several forms of manumission published by Marculfus, and all of them are founded on religious considerations, in order to procure the favour of God, or to obtain the forgiveness of their sins. Lib. ii. c. 23, 33, 34. edit. Baluz. The same observation holds with respect to the other collections of Formulæ annexed to Marculfus. As sentiments of religion induced some to grant liberty to their fellow Christians who groaned under the yoke of servitude; so mistaken ideas concerning devotion led others to relinquish their liberty. When a person conceived an extraordinary respect for the saint who was the patron of any church or monastery in which he was accustomed to attend religious worship, it was not unusual among men possessed with an excess of superstitious reverence, to give up themselves and their posterity to be the slaves of the saint. Mabillon de Re Diplomat. lib. vi. 632. The *oblati* or voluntary slaves of churches or monasteries were very numerous, and may be divided into three different classes. The first were such as put themselves and effects under the protection of a particular church or monastery, binding themselves to defend its privileges and property against every

aggreſſor. Theſe were prompted to do ſo not merely by devotion, but in order to obtain that ſecurity which aroſe from the protection of the church. They were rather vaſſals than ſlaves, and ſometimes perſons of noble birth found it prudent to ſecure the protection of the church in this manner. Perſons of the ſecond claſs bound themſelves to pay an annual tax or quit-rent out of their eſtates to a church or monaſtery. Beſides this, they ſometimes engaged to perform certain ſervices. They were called *cenſuales*. The laſt claſs conſiſted of ſuch as actually renounced their liberty, and became ſlaves in the ſtrict and proper ſenſe of the word. Theſe were called *miniſteriales*, and enſlaved their bodies, as ſome of their charters bear, that they might procure the liberty of their ſouls. Potgieſſerus de ſtatu ſervorum, lib. i. cap. i. § 6, 7. How zealous the clergy were to encourage the opinions which led to this practice, will appear from a clauſe in a charter by which one gives up himſelf as a ſlave to a monaſtery. "Cum ſit omni carnali ingenuitate generoſius extremum quodcumq; Dei ſervitium, ſcilicet quod terrena nobilitas multos plerumq; vitiorum ſervos facit, ſervitus vero Chriſti nobiles virtutibus reddit, nemo autem ſani capitis virtutibus vitia comparaverit, claret pro certo eum eſſe generoſiorem, qui ſe Dei ſervitio præbuerit proniorem. Quod ego Ragnaldus intelligens, &c." Another charter is expreſſed in the following words: "Eligens magis eſſe ſervus Dei quam libertus ſæculi, firmiter credens & ſciens, quod ſervire Deo, regnare eſt, ſummaque ingenuitas ſit in qua ſervitus comparabatur Chriſti, &c. Du Cange, voc. *Obiatus*, vol. iv. p. 1286, 1287. Great, however, as the power of religion was, it does not appear, that the enfranchiſement of ſlaves was a frequent practice while the feudal ſyſtem preſerved its vigour. On the contrary, there were laws which ſet bounds to it as detrimental to ſociety. Potgieſſ. lib. iv. c. 2. § 6. The inferior order of men owed the recovery of their liberty to the decline of that ariſtocratical policy, which lodged the moſt extenſive power in the hands of a few members of the ſociety, and depreſſed all the reſt. When Louis X. iſſued his ordonnance, ſeveral ſlaves had been ſo long accuſtomed to ſervitude, and their minds were ſo much debaſed by that unhappy ſituation, that they refuſed to accept of the liberty which was offered them. D'Ach. Spicel. vol. xi. p. 387. Long after the reign of Louis X. ſeveral of the French nobility continued to aſſert their ancient dominion over their ſlaves. It appears from an ordonnance of the famous Bertrand de Gueſchlin Conſtable of France, that the cuſtom of enfranchiſing them was conſidered as a pernicious innovation. Morice Mem. pour ſervir des preuves a l'Hiſt. de Bret. tom. ii. p. 100. In ſome inſtances, when the prædial ſlaves were declared to be freemen, they were ſtill bound to perform certain ſervices to their ancient maſters; and were kept in a ſtate different from other ſubjects, being reſtricted either from purchaſing land, or becoming members of a community within the precincts of the manor to which they formerly belonged. Martene & Durand. Theſaur. Anecdot. vol. i. p. 914. This, however, ſeems not to have been common.—There is no general law for the manumiſſion of

ſlaves in the Statute-book of England, ſimilar to that which has been quoted from the Ordonnances of the kings of France. Tho' the genius of the Engliſh conſtitution ſeems early to have favoured perſonal liberty, perſonal ſervitude, nevertheleſs, continued long in England in ſome particular places. In the year 1514, we find a charter of Henry VIII. enfranchiſing two ſlaves belonging to one of his manors. Rym. Fœder. vol. xiii. p 470. As late as the year 1574, there is a commiſſion from Queen Elizabeth with reſpect to the manumiſſion of certain bondmen belonging to her. Rymer, in Obſervat. on the Statutes, &c. p. 251.

## NOTE XXI. Sect. I. p. 47. [X].

There is no cuſtom in the middle ages more ſingular than that of private war. It is a right of ſo great importance, and prevailed ſo univerſally, that the regulations concerning it occupy a conſiderable place in the ſyſtem of laws during the middle ages. M. de Monteſquieu, who has unravelled ſo many intricate points in feudal juriſprudence, and thrown light on ſo many cuſtoms formerly obſcure and unintelligible, was not led by his ſubject to conſider this. I ſhall therefore give a more minute account of the cuſtoms and regulations which directed a practice ſo contrary to the preſent ideas of civilized nations concerning government and order. 1. Among the ancient Germans, as well as other nations in a ſimilar ſtate of ſociety, the right of avenging injuries was a private and perſonal right exerciſed by force of arms, without any reference to an umpire, or any appeal to a magiſtrate for deciſion. The cleareſt proofs of this were produced, Note VI.—2. This practice ſubſiſted among the barbarous nations after their ſettlement in the provinces of the empire which they conquered; and as the cauſes of diſſenſion among them multiplied, their family feuds and private wars became more frequent. Proofs of this occur in their early hiſtorians. Greg. Turon. Hiſt. lib. vii. c. 2. lib. viii. c. 18. lib. x. c. 27. and likewiſe in the codes of their laws. It was not only allowable for the relations to avenge the injuries of their family, but it was incumbent on them. Thus by the laws of the Angli and Werini, ad quemcunque hereditas terræ pervenerit, ad illum veſtis bellica id eſt lorica & ultio proximi, et ſolatio leudis, debet pertinere, tit. vi. § 5. ap. Lindenbr. Leg. Saliq. tit. 63. Leg. Longob. lib. ii. tit. 14. § 10.—3. None but gentlemen, or perſons of noble birth, had the right of private war. All diſputes between ſlaves, villani, the inhabitants of towns, and free men of inferior condition, were decided in the courts of juſtice. All diſputes between gentlemen and perſons of inferior rank were terminated in the ſame manner. The right of private war ſuppoſed nobility of birth, and equality of rank in both the contending parties. Beaumanoir Coſtumes de Beauv. ch. lix. p. 300. Ordon. des Rois de France, tom. ii. 395. § xvii. 508. § xv. &c. The dignified eccleſiaſtics likewiſe claimed and exerciſed the right of private war; but as it was not altogether decent for them to proſecute quarrels in perſon, *advocati* or *vidames* were choſen by the ſeveral monaſteries and biſhoprics. Theſe were commonly men of

high rank and reputation, who became the protectors of the churches and convents by which they were elected; eſpouſed their quarrels, and fought their battles; armis omnia quæ erant eccleſiæ viriliter defendebant, et vigilanter protegebant. Bruſſel Uſage des Fiefs, tom. i. p. 144. Du Cange, voc. *Advocatus.* On many occaſions, the martial ideas to which eccleſiaſtics of noble birth were accuſtomed, made them forget the pacific ſpirit of their profeſſion, and led them into the field in perſon at the head of their vaſſals, "flamma, ferro, cæde, poſſeſſiones eccleſiarum prælati defendebant." Guido Abbas ap. Du Cange, ib. p. 179.—4. It was not every injury or treſpaſs that gave a gentleman a title to make war upon his adverſary. Atrocious acts of violence, inſults and affronts publicly committed, were legal and permitted motives for taking arms againſt the authors of them. Such crimes as are now puniſhed capitally in civilized nations, at that time juſtified private hoſtilities. Beauman. ch. lix. Du Cange Diſſert. xxix. ſur Joinville, p. 331. But though the avenging of injuries was the only motive that could legally authoriſe a private war, yet diſputes concerning civil property often gave riſe to hoſtilities, and were terminated by the ſword. Du Cange Diſſert. p. 332.—5. All perſons preſent when any quarrel aroſe, or any act of violence was committed, were included in the war which it occaſioned; for it was ſuppoſed to be impoſſible for any man in ſuch a ſituation to remain neuter, without taking ſide with one or other of the contending parties. Beauman. p. 300.—6. All the kindred of the two principals in the war were included in it, and obliged to eſpouſe the quarrel of the chieftain with whom they were connected. Du Cange, ib. 332. This was founded on the maxim of the ancient Germans, ſuſcipere tam inimicitias ſeu patris, ſeu propinqui, quam amicitias, neceſſe eſt;" a maxim natural to all rude nations, among which the form of ſociety, and political union, ſtrengthen ſuch a ſentiment. This obligation was enforced by legal authority. If a perſon refuſed to take part in the quarrel of his kinſman, and to aid him againſt his adverſary, he was deemed to have renounced all the rights and privileges of kindredſhip, and became incapable of ſucceeding to any of his relations, or of deriving any benefit from any civil right or property belonging to them. Du Cange Diſſert. p. 333. The method of aſcertaining the degree of affinity which obliged a perſon to take part in the quarrel of a kinſman, was curious. While the church prohibited the marriage of perſons within the ſeventh degree of affinity, the vengeance of private war extended as far as this abſurd prohibition, and all who had ſuch a remote connection with any of the principals, were involved in the calamities of war. But when the church relaxed ſomewhat of its rigour, and did not extend its prohibition of marrying beyond the fourth degree of affinity, the ſame reſtriction took place in the conduct of private war. Beauman. 303. Du Cange Diſſert. 333.—7. A private war could not be carried on between two full brothers, becauſe both have the ſame common kindred, and conſequently neither had any perſons bound to ſtand by him againſt the other in the conteſt; but two brothers

of the half blood might wage war, becauſe each of them has a diſtinct kindred. Beauman. p. 299.—8. The vaſſals of each principal in any private war were involved in the conteſt, becauſe by the feudal maxims they were bound to take arms in defence of the chieftain of whom they held, and to aſſiſt him in every quarrel. As ſoon, therefore, as feudal tenures were introduced, and this artificial connection was eſtabliſhed between vaſſals and the baron of whom they held, vaſſals came to be conſidered as in the ſame ſtate with relations. Beauman. 303.—9. Private wars were very frequent for ſeveral centuries. Nothing contributed more to increaſe thoſe diſorders in government, or to encourage ſuch ferocity of manners as reduced the nations of Europe to that wretched ſtate which diſtinguiſhed the period of hiſtory which I am reviewing. Nothing was ſuch an obſtacle to the introduction of a regular adminiſtration of juſtice. Nothing could more effectually diſcourage induſtry, or retard the progreſs and cultivation of the arts of peace. Private wars were carried on with all the deſtructive rage which is to be dreaded from violent reſentment when armed with force, and authoriſed by law. It appears from the ſtatutes prohibiting or reſtraining the exerciſe of private hoſtilities, that the invaſion of the moſt barbarous enemy could not be more deſolating to a country, or more fatal to its inhabitants, than thoſe inteſtine wars. Ordon. tom. i. p. 701. tom. ii. p. 395, 408, 507, &c. The contemporary hiſtorians deſcribe the exceſſes committed in proſecution of theſe quarrels in ſuch terms as excite aſtoniſhment and horror. I ſhall mention only one paſſage from the hiſtory of the Holy War, by Guibert Abbot of Nogent: "Erat eo tempore maximis ad invicem hoſtilitatibus, totius Francorum regni facta turbatio; crebra ubiq; latrocinia, viarum obſeſſio; audiebantur paſſim, immo fiebant incendia infinita; nullis præter ſola & indomita cupiditate exiſtentibus cauſis extruebantur prælia; & ut brevi totum claudam, quicquid obtutibus cupidorum ſubjacebat, nuſquam attendendo cujus eſſet, prædæ patebat." Geſta Dei per Francos, vol. i. p. 482.

Having thus collected the chief regulations which cuſtom had eſtabliſhed concerning the right and exerciſe of private war, I ſhall enumerate in chronological order, the various expedients employed to aboliſh or reſtrain this fatal cuſtom. 1. The firſt expedient employed by the civil magiſtrate, in order to ſet ſome bounds to the violence of private revenge, was the fixing by law the fine or compoſition to be paid for each different crime. The injured perſon was originally the ſole judge concerning the nature of the wrong which he had ſuffered, the degree of vengeance which he ſhould exact, as well as the ſpecies of atonement or reparation with which he might reſt ſatisfied. Reſentment became of courſe as implacable as it was fierce. It was often a point of honour not to forgive, nor to be reconciled. This made it neceſſary to fix thoſe compoſitions which make ſo great a figure in the laws of barbarous nations. The nature of crimes and offences was eſtimated by the magiſtrate, and the ſum due to the perſon offended was aſcertained with a minute and often a whimſical accuracy. Rotha-

ris, the legiſlator of the Lombards, who reigned about the middle of the ſeventh century, diſcovers his intention both in aſcertaining the compoſition to be paid by the offender, and in increaſing its value; it is, ſays he, that the enmity may be extinguiſhed, the proſecution may ceaſe, and peace may be reſtored. Leg. Longob. lib. i tit. 7. § 10.—2. About the beginning of the ninth century, Charlemagne ſtruck at the root of the evil, and enacted, "That when any perſon had been guilty of a crime, or had committed an outrage, he ſhould immediately ſubmit to the penance which the church impoſed, and offer to pay the compoſition which the law preſcribed, and if the injured perſon or his kindred ſhould refuſe to accept of this, and preſume to avenge themſelves by force of arms, their lands and properties ſhould be forfeited." Capitul. A. D. 802, edit. Baluz. vol. i. 371.—3. But in this, as well as in other regulations, the genius of Charlemagne advanced before the ſpirit of his age. The ideas of his contemporaries concerning regular government were too imperfect, and their manners too fierce to ſubmit to this law. Private wars, with all the calamities which they occaſioned, became more frequent than ever after the death of that great monarch. His ſucceſſors were unable to reſtrain them. The church found it neceſſary to interpoſe. The moſt early of theſe interpoſitions now extant, is towards the end of the tenth century. In the year 990, ſeveral biſhops in the ſouth of France aſſembled, and publiſhed various regulations, in order to ſet ſome bounds to the violence and frequency of private wars; if any perſon within their dioceſes ſhould venture to tranſgreſs, they ordained that he ſhould be excluded from all Chriſtian privileges during his life, and be denied Chriſtian burial after his death. Du Mont Corps Diplomatique, tom. i. p. 41. Theſe, however, were only partial remedies; and therefore a council was held at Limoges, A. D. 994. The bodies of the ſaints, according to the cuſtom of thoſe ages, were carried thither; and by theſe ſacred relics men were exhorted to lay down their arms, to extinguiſh their animoſities, and to ſwear that they would not for the future violate the public peace by their private hoſtilities. Bouquet Recueil des Hiſtor. vol. x. p. 49, 147. Several other councils iſſued decrees to the ſame effect. Du Cange Diſſert. 343.—4. But the authority of councils, how venerable ſoever in thoſe ages, was not ſufficient to aboliſh a cuſtom which flattered the pride of the nobles, and gratified their favourite paſſions. The evil grew ſo intolerable, that it became neceſſary to employ ſupernatural means for ſuppreſſing it. A biſhop of Aquitaine, A. D. 1032, pretended that an angel had appeared to him, and brought him a writing from heaven, enjoining men to ceaſe from their hoſtilities, and to be reconciled to each other. It was during a ſeaſon of public calamity that he publiſhed this revelation. The minds of men were diſpoſed to receive pious impreſſions, and willing to perform any thing in order to avert the wrath of heaven. A general peace and ceſſation from hoſtilities took place, and continued for ſeven years; and a reſolution was formed, that no man ſhould in times to come attack or moleſt his adverſaries during the ſeaſon ſet a-

part for celebrating the great feſtivals of the church, or from the evening of Thurſday in each week, to the morning of Monday in the week enſuing, the intervening days being conſidered as particularly holy, our Lord's Paſſion having happened on one of theſe days, and his Reſurrection on another. A change in the diſpoſitions of men ſo ſudden, and which produced a reſolution ſo unexpected, was conſidered as miraculous; and the reſpite from hoſtilities which followed upon it, was called *The Truce of God.* Glaber. Rodolphus Hiſtor. lib. v. ap. Bouquet, vol. x. p. 59. This, from being a regulation or concert in one kingdom, became a general law in Chriſtendom, was confirmed by the authority of ſeveral popes, and the violators were ſubjected to the penalty of excommunication. Corpus Jur. Canon. Decretal. lib. i. tit. 34. c. i. Du Cange Gloſſar. voc. *Treuga.* An act of the council of Toulujes in Rouſillon, A. D. 1041, containing all the ſtipulations required by the truce of God, is publiſhed by Dom de Vic and Dom Vaiſette, Hiſt de Languedoc, tom ii. Preuves, p. 206. A ceſſation from hoſtilities during three complete days in every week, allowed ſuch a conſiderable ſpace for the paſſions of the antagoniſts to cool, and for the people to enjoy a reſpite from the calamities of war, as well as to take meaſures for their own ſecurity, that, if this truce of God had been exactly obſerved, it muſt have gone far towards putting an end to private wars. This, however, ſeems not to have been the caſe; the nobles, diſregarding the truce, proſecuted their quarrels without interruption as formerly. Qua nimirum tempeſtate, univerſæ provinciæ adeo devaſtationis continuæ importunitate inquietantur, ut ne ipſa, pro obſervatione divinæ pacis, profeſſa ſacramenta cuſtodiantur. Abbas Uſpergenſis, apud Datt de pace imperi. publica, p. 13, No. 35. The violent ſpirit of the nobility could not be reſtrained by any engagements. The complaints of this were frequent; and biſhops, in order to compel them to renew their vows and promiſes of ceaſing from their private wars, were obliged to enjoin their clergy to ſuſpend the performance of divine ſervice and the exerciſe of any religious function within the pariſhes of ſuch as were refractory and obſtinate. Hiſt. de Langued. par D. D. de Vic & Vaiſette, tom. ii. Preuves, p. 118.—5. The people, eager to obtain relief from their ſufferings, called in a ſecond time revelation to their aid. Towards the end of the twelfth century, a carpenter in Guienne gave out, that Jeſus Chriſt, together with the bleſſed Virgin, had appeared to him, and having commanded him to exhort mankind to peace, had given him, as a proof of his miſſion, an image of the Virgin holding her ſon in her arms, with this inſcription, *Lamb of God who takeſt away the ſins of the world, give us peace.* This low fanatic addreſſed himſelf to an ignorant age, prone to credit what was marvellous. He was received as an inſpired meſſenger of God. Many prelates and barons aſſembled at Puy, and took an oath, not only to make peace with all their enemies, but to attack ſuch as refuſed to lay down their arms, and to be reconciled to their enemies. They formed an aſſociation for this purpoſe, and aſſumed the honourable name of *the Brotherhood of God.* Robertus de Monte Mi-

chaele, ap. M. de Lauriere Pref. tom. i. Ordon. p. 29. But the influence of this ſuperſtitious terror or devotion was not of long continuance.—6. The civil magiſtrate was obliged to exert his authority in order to check a cuſtom which threatened the diſſolution of government. Philip Auguſtus, as ſome imagine, or St. Louis, as is more probable, publiſhed an ordonnance, A. D. 1245, prohibiting any perſon to commence hoſtilities againſt the friends and vaſſals of his adverſary, until forty days after the commiſſion of the crime or offence which gave riſe to the quarrel; declaring, that if any man preſumed to tranſgreſs this ſtatute, that he ſhould be conſidered as guilty of a breach of the public peace, and be tried and puniſhed by the judge ordinary as a traitor. Ordon. tom. i. p. 56. This was called *the Royal Truce*, and afforded time for the violence of reſentment to ſubſide, as well as leiſure for the good offices of ſuch as were willing to compoſe the difference. The happy effects of this regulation ſeem to have been conſiderable, if we may judge from the ſolicitude of ſucceeding monarchs to enforce it.—7. In order to reſtrain the exerciſe of private war ſtill farther, Philip the Fair, towards the cloſe of the ſame century, A. D. 1296, publiſhed an ordonnance commanding all private hoſtilities to ceaſe, while he was engaged in war againſt the enemies of the ſtate. Ordon. tom i. p. 328, 390. This regulation, which ſeems to be almoſt eſſential to the exiſtence and preſervation of ſociety, was often renewed by his ſucceſſors, and being enforced by the regal authority, proved a conſiderable check to the deſtructive conteſts of the nobles. Both theſe regulations, introduced firſt in France, were adopted by the other nations of Europe.—8. The evil, however, was ſo inveterate, that it did not yield to all theſe remedies. No ſooner was public peace eſtabliſhed in any kingdom, than the barons renewed their private hoſtilities. They not only ſtruggled to maintain this pernicious right, but to ſecure the exerciſe of it without any reſtraint. Upon the death of Philip the Fair, the nobles of different provinces in France formed aſſociations, and preſented remonſtrances to his ſucceſſor, demanding the repeal of ſeveral laws, by which he had abridged the privileges of their order. Among theſe, the right of private war is always mentioned as one of the moſt valuable; and they claim that the reſtraint impoſed by the truce of God, the royal truce, as well as that ariſing from the ordonnance of the year 1296, ſhould be taken off. In ſome inſtances, the two ſons of Philip who mounted the throne ſucceſſively, eluded their demands; in others, they were obliged to make conceſſions. Ordon. tom. i. p. 551, 557, 561, 573. The ordonnances to which I here refer are of ſuch length that I cannot inſert them, but they are extremely curious and may be peculiarly inſtructive to an Engliſh reader, as they throw conſiderable light on that period of Engliſh hiſtory, in which the attempts to circumſcribe the regal prerogative were carried on, not by the people ſtruggling for liberty, but by the nobles contending for power. It is not neceſſary to produce any evidence of the continuance and frequency of private wars under the ſucceſſors of Philip the Fair.—9. A practice ſomewhat ſimi-

lar to the royal truce was introduced, in order to ſtrengthen and extend it. Bonds of aſſurance, or mutual ſecurity, were demanded from the parties at variance, by which they obliged themſelves to abſtain from all hoſtilities, either during a time mentioned in the bond, or for ever; and became ſubject to heavy penalties, if they violated this obligation. Theſe bonds were ſometimes granted voluntarily, but more frequently exacted by the authority of the civil magiſtrate. Upon a petition from the party who felt himſelf weakeſt, the magiſtrate ſummoned his adverſary to appear in court, and obliged him to give a bond of aſſurance. If, after that, he committed any farther hoſtilities, he became ſubject to all the penalties of treaſon. This reſtraint on private war was known in the age of St. Louis. Eſtabliſſemens, liv. i. c. 28. It was frequent in Bretagne; and what is very remarkable, ſuch bonds of aſſurance were given mutually between vaſſals and the lord of whom they held. Oliver de Cliſſon grants one to the Duke of Bretagne, his ſovereign. Morice Mem. pour ſervir de preuves a l'Hiſt. de Bret. tom. i. p. 846. ii. p. 371. Many examples of bonds of aſſurance in other provinces of France are collected by Bruſſel, tom. ii. p. 856. The nobles of Burgundy remonſtrated againſt this practice, and obtained exemption from it as an encroachment on the privileges of their order. Ordon. tom. i. p. 558. This mode of ſecurity was firſt introduced in cities, and the good effects of it having been felt there, was extended to the nobles. See Note XVI.—10. The calamities occaſioned by private wars became at ſome times ſo intolerable, that the nobles entered into voluntary aſſociations, binding themſelves to refer all matters in diſpute, whether concerning civil property, or points of honour, to the determination of the majority of the aſſociates. Morice Mem. pour ſervir de preuves a l'Hiſt. de Bret. tom. ii. p. 728.—11. But all theſe expedients proving ineffectual, Charles VI. A. D. 1413, iſſued an ordonnance expreſsly prohibiting private wars on any pretext whatſoever, with power to the judge ordinary to compel all perſons to comply with this injunction, and to puniſh ſuch as ſhould prove refractory or diſobedient, by impriſoning their perſons, ſeizing their goods, and appointing the officers of juſtice, *Mangeurs & Gaſteurs*, to live at free quarters on their eſtate. If thoſe who were diſobedient to this edict could not be perſonally arreſted, he appointed their friends and vaſſals to be ſeized, and detained until they gave ſurety for keeping the peace; and he aboliſhed all laws, cuſtoms, or privileges which might be pleaded in oppoſition to this ordonnance. Ordon. tom. x. p. 138. How ſlow is the progreſs of reaſon and of civil order! Regulations which to us appear ſo equitable, obvious, and ſimple, required the efforts of civil and eccleſiaſtical authority, during ſeveral centuries, to introduce and eſtabliſh them. Even poſterior to this period, Louis XI. was obliged to aboliſh private wars in Dauphiné, by a particular edict, A. D. 1451. Du Cange Diſſert. p. 348.

This note would ſwell to a diſproportionate bulk, if I ſhould attempt to inquire with the ſame minute attention into the pro-

greſs of this pernicious cuſtom in the other countries of Europe. In England, the ideas of the Saxons concerning perſonal revenge, the right of private wars, and the compoſition due to the party offended, ſeem to have been much the ſame with thoſe which prevailed on the Continent. The law of Ina *de vindicantibus*, in the eighth century, Lamb. p. 3. thoſe of Edmund in the tenth century, *de homicidio* Lamb. p. 72, & *de inimicitiis*, p. 76. and thoſe of Edward the Confeſſor, in the eleventh century, *de temporibus & diebus pacis*, or Treuga Dei, Lamb. p. 126. are perfectly ſimilar to the *ordonnances* of the French kings their contemporaries. The laws of Edward, *de pace regis*, are ſtill more explicit than thoſe of the French monarchs, and, by ſeveral proviſions in them, diſcover that a more perfect police was eſtabliſhed in England at that period. Lambard, p. 128. fol. verſ. Even after the conqueſt, private wars, and the regulations for preventing them, were not altogether unknown, as appears from Madox Formulare Anglicanum, No. CXLV. and from the extracts from Domeſday Book, publiſhed by Gale Scriptores Hiſt. Britan. p. 759, 777. The well known clauſe in the form of an Engliſh indictment, which, as an aggravation of the criminal's guilt, mentions his having aſſaulted a perſon, who was in the peace of God and of the King, ſeems to be borrowed from the Treuga or Pax Dei, and the Pax Regis, which I have explained. But after the conqueſt, the mention of private wars among the nobility occurs more rarely in the Engliſh hiſtory, than in that of any other European nation, and no laws concerning them are to be found in the body of their ſtatutes. Such a change in their own manners, and ſuch a variation from thoſe of their neighbours, is remarkable. Is it to be aſcribed to the extraordinary power that William the Norman acquired by right of conqueſt, and tranſmitted to his ſucceſſors, which rendered the execution of juſtice more vigorous and deciſive, and the juriſdiction of the king's court more extenſive than under the monarchs on the Continent? Or, was it owing to the ſettlement of the Normans in England, who having never adopted the practice of private war in their own country, aboliſhed it in the kingdom which they conquered? It is aſſerted in an ordonnance of John king of France, that in all times paſt, perſons of every rank in Normandy have been prohibited to wage private war, and the practice has been deemed unlawful. Ordon. tom. ii. p. 407. If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But as there are ſome Engliſh Acts of Parliament, which, according to the remark of the learned author of the *Obſervations on the Statutes, chiefly the more ancient*, recite falſehoods, it may be added, that this is not peculiar to the laws of that country. Notwithſtanding the poſitive aſſertion contained in this public law of France, there is good reaſon for conſidering it as a ſtatute which recites a falſehood. This, however, is not the place for diſcuſſing that point. It is an inquiry not unworthy the curioſity of an Engliſh antiquary.

In Caſtile, the pernicious practice of private war prevailed, and was authorized by the cuſtoms and law of the kingdom. Leges

Tauri, tit. 76. cum commentario Anton. Gomezii, p. 551. As the Caſtilian nobles were no leſs turbulent than powerful, their quarrels and hoſtilities involved their country in many calamities. Innumerable proofs of this occur in Mariana. In Aragon, the right of private revenge was likewiſe authoriſed by law; exerciſed in its full extent, and accompanied with the ſame unhappy conſequences. Hieron. Blanca Comment. de Rebus Arag. ap. Schotii Hiſpan. illuſtrat. vol. iii. p. 733. Lex Jacobi I. A. D. 1247. Fueros & Obſervancias del Reyno de Aragon. lib. ix. p. 182. Several confederacies between the kings of Aragon and their nobles, for the reſtoring of peace, founded on the truce of God, are ſtill extant. Petr. de Marca, *Marca* ſive Limes Hiſpanic. App. 1303, 1388, 1428. As early as the year 1165, we find a combination of the king and court of Aragon, in order to aboliſh the right of private war, and to puniſh thoſe who preſumed to claim that privilege. Anales de Aragon por. Zurita, vol. i. p. 73. But the evil was ſo inveterate, that as late as A. D. 1519, Charles V. was obliged to publiſh a law enforcing all former regulations tending to ſuppreſs this practice. Fueros et Obſervanc. lib. ix. 183.

The Lombards, and other northern nations who ſettled in Italy, introduced the ſame maxims concerning the right of revenge into that country, and theſe were followed by the ſame effects. As the progreſs of the evil was perfectly ſimilar to what happened in France, the expedients employed to check its career, or to extirpate it finally, reſembled thoſe which I have enumerated. Murat. Ant. Ital. vol. ii. p. 306, &c.

In Germany, the diſorders and calamities occaſioned by the right of private war were greater and more intolerable than in any other country of Europe. The Imperial authority was ſo much ſhaken and enfeebled by the violence of the civil wars excited by the conteſts between the popes and the emperors of the Franconian and Suabian lines, that not only the nobility but the cities acquired almoſt independent power, and ſcorned all ſubordination and obedience to the laws. The frequency of theſe *faidæ*, or private wars, is often mentioned in the German Annals, and the fatal effects of them are moſt pathetically deſcribed, Datt de Pace Imper. pub. lib. i. cap. v. No. 30, & paſſim. The Germans early adopted the Treuga Dei, which was firſt eſtabliſhed in France. This, however, proved but a temporary and ineffectual remedy. The diſorders multiplied ſo faſt, and grew to be ſo enormous, that they threatened the diſſolution of ſociety, and compelled the Germans to have recourſe to the only remedy of the evil, viz. an abſolute prohibition of private wars. The emperor William publiſhed his edict to this purpoſe, A. D. 1255, an hundred and ſixty years previous to the ordonnance of Charles VI. in France. Datt, lib. i. cap. 4. No. 20. But neither he nor his ſucceſſors had authority to ſecure the obſervance of it. This gave riſe to a practice in Germany, which conveys to us a ſtriking idea both of the intolerable calamities occaſioned by private wars, and of the feebleneſs of government during the twelfth and thirteenth centuries. The cities and nobles entered into

alliances and aſſociations, by which they bound themſelves to maintain the public peace, and to make war on ſuch as ſhould violate it. This was the origin of the league of the Rhine, of Suabia, and of many ſmaller confederacies diſtinguiſhed by various names. The riſe, progreſs, and beneficial effects of theſe aſſociations are traced by Datt, with great accuracy. Whatever degree of public peace or of regular adminiſtration was preſerved in the empire from the beginning of the twelfth century to the cloſe of the fifteenth, Germany owes to theſe leagues. During that period, political order, reſpect for the laws, together with the equal adminiſtration of juſtice, made conſiderable progreſs in Germany. But the final and perpetual abolition of the right of private war was not accompliſhed until A. D. 1495. The Imperial authority was by that time more firmly eſtabliſhed, the ideas of men with reſpect to government and ſubordination were become more juſt. That barbarous and pernicious privilege of waging war, which the nobles had ſo long poſſeſſed, was declared to be incompatible with the happineſs and exiſtence of ſociety. In order to terminate any differences which might ariſe among the various members of the Germanic body, the imperial chamber was inſtituted with ſupreme juriſdiction, to judge without appeal in every queſtion brought before it. That court has ſubſiſted ſince that period, forming a very reſpectable tribunal, of eſſential importance in the Germanic conſtitution. Datt, lib. iii. iv. v. Pfeffel Abregè de l'Hiſtoire, du Droit, &c. p. 556.

Note XXII. Sect. I. p. 56. [Y.]

It would be tedious and of little uſe to enumerate the various modes of appealing to the juſtice of God, which ſuperſtition introduced during the ages of ignorance. I ſhall mention only one, becauſe we have an account of it in a placitum or trial in the preſence of Charlemagne, from which we may learn the imperfect manner in which juſtice was adminiſtered even during his reign. In the year 775, a conteſt aroſe between the biſhop of Paris and the abbot of St. Denys, concerning the property of a ſmall abbey. Each of them exhibited deeds and records, in order to prove the right to be in them. Inſtead of trying the authenticity, or conſidering the import of theſe, the point was referred to the *judicium crucis*. Each produced a perſon, who during the celebration of maſs, ſtood before the croſs with his arms expanded; and he, whoſe repreſentative firſt became weary, and altered his poſture, loſt the cauſe. The perſon employed by the biſhop on this occaſion had leſs ſtrength or leſs ſpirit than his adverſary, and the queſtion was decided in the favour of the abbot. Mabillon de Re Diplomat. lib. vi. p. 498. If a prince ſo enlightened as Charlemagne countenanced ſuch an abſurd mode of deciſion, it is no wonder that other monarchs ſhould tolerate it ſo long. M. de Monteſquieu has treated of the trial by judicial combat at conſiderable length. The two talents which diſtinguiſhed that illuſtrious author, induſtry in tracing all the circumſtances of ancient and obſcure inſtitutions, and ſagacity in penetrating into the cauſes and princi-

ples which contributed to eſtabliſh them, are equally conſpicuous in his obſervations on this ſubject. To theſe I refer the reader, as they contain moſt of the principles by which I have endeavoured to explain this practice. De l'Eſprit des Loix, lib. xxviii. It ſeems to be probable from the remarks of M. de Monteſquieu, as well as from the facts produced by Muratori, tom. iii. Diſſert. xxxviii. that appeals to the juſtice of God by the experiments with fire and water, &c. were frequent among the people who ſettled in the different provinces of the Roman empire, before they had recourſe to the judicial combat; and yet the judicial combat ſeems to have been the moſt ancient mode of terminating any controverſy among the barbarous nations in their original ſettlements. This is evident from Velleius Paterculus, lib. ii. c. 118. who informs us, that all queſtions which were decided among the Romans by legal trial, were terminated among the Germans by arms. The ſame thing appears in the ancient laws and cuſtoms of the Swedes, quoted by Jo. O. Stiernhook de Jure Sueonum & Gothorum vetuſto, 4to, Holmiæ 1682, lib. i. c. 7. It is probable that when the various tribes which invaded the empire were converted to Chriſtianity, their ancient cuſtom of allowing judicial combats appeared ſo glaringly repugnant to the precepts of religion, that, for ſome time, it was aboliſhed, and by degrees, ſeveral circumſtances which I have mentioned led them to reſume it.

It ſeems likewiſe to be probable from a law quoted by Stiernhook in the treatiſe which I have mentioned, that the judicial combat was originally permitted, in order to determine points reſpecting the perſonal character or reputation of individuals, and was afterwards extended not only to criminal caſes, but to queſtions concerning property. The words of the law are, "if any man ſhall ſay to another theſe reproachful words, "you are not "a man equal to other men," or, "you have not the heart of a "man," and the other ſhall reply, "I am a man as good as you," let them meet on the highway. If he who firſt gave offence appear, and the perſon offended abſent himſelf, let the latter be deemed a worſe man even than he was called; let him not be admitted to give evidence in judgment either for man or woman, and let him not have the privilege of making a teſtament. If he who gave the offence be abſent, and only the perſon offended appear, let him call upon the other thrice with a loud voice, and make a mark upon the earth, and then let him who abſented himſelf be deemed infamous, becauſe he uttered words which he durſt not ſupport. If both ſhall appear properly armed, and the perſon offended ſhall fall in the combat, let a half compenſation be paid for his death. But if the perſon who gave the offence ſhall fall, let it be imputed to his own raſhneſs. The petulance of his tongue hath been fatal to him. Let him lie in the field without any compenſation being demanded for his death." Lex Uplandica, ap. Stiern. p. 76. Martial people were extremely delicate with reſpect to every thing that affected their reputation as ſoldiers. By the laws of the Salians, if any man called another a

*hare*, or accuſed him of having left his ſhield in the field of battle, he was ordained to pay a large fine. Leg. Sal. tit. xxxii. § 4, 6. By the law of the Lombards, if any one called another *arga*, i. e. a good for nothing fellow, he might immediately challenge him to combat. Leg. Longob. lib. i. tit v. § 1. By the law of the Salians, if one called another *cenitus*, a term of reproach equivalent to arga, he was bound to pay a very high fine. Tit. xxxii. § 1. Paulus Diaconus relates the violent impreſſion which this reproachful expreſſion made upon one of his countrymen, and the fatal effects with which it was attended. De Geſtis Longobard. lib. vi. c. 24. Thus the ideas concerning the point of honour, which we are apt to conſider as a modern refinement, as well as the practice of duelling, to which it gave riſe, are derived from the notions of our anceſtors, while in a ſtate of ſociety very little improved.

As M. de Monteſquieu's view of this ſubject did not lead him to conſider every circumſtance relative to judicial combats, I ſhall mention ſome particular facts neceſſary for the illuſtration of what I have ſaid with reſpect to them. A remarkable inſtance occurs of the deciſion of an abſtract point of law by combat. A queſtion aroſe in the tenth century, concerning the *right* of *repreſentation*, which was not then fixed, though now univerſally eſtabliſhed in every part of Europe. "It was a matter of doubt and diſpute (ſaith the hiſtorian), whether the ſons of a ſon ought to be reckoned among the children of the family, and ſucceed equally with their uncles, if their father happened to die while their grandfather was alive. An aſſembly was called to deliberate on this point, and it was the general opinion that it ought to be remitted to the examination and deciſion of judges. But the emperor following a better courſe, and deſirous of dealing honourably with his people and nobles, appointed the matter to be decided by battle between two champions. He who appeared in behalf of the right of children to repreſent their deceaſed father was victorious; and it was eſtabliſhed, by a perpetual decree, that they ſhould hereafter ſhare in the inheritance together with their uncles." Wittikindus Corbienſis, lib. Annal. ap. M. de Lauriere Pref. Ordon. vol. i. p. xxxiii. If we can ſuppoſe the caprice of folly to lead men to any action more extravagant than this of ſettling a point in law by combat, it muſt be of that referring the truth or falſehood of a religious opinion to be decided in the ſame manner To the diſgrace of human reaſon, it has been capable even of this extravagance. A queſtion was agitated in Spain in the eleventh century, whether the Muſarabic liturgy and ritual which had been uſed in the churches of Spain, or that approved of by the ſee of Rome, which differed in many particulars from the other, contained the form of worſhip moſt acceptable to the Deity. The Spaniards contended zealouſly for the ritual of their anceſtors. The popes urged them to receive that to which they had given their infallible ſanction. A violent conteſt aroſe. The nobles propoſed to decide the controverſy by the ſword. The king approved of this method of deciſion. Two knights in complete armour entered the liſts. John Ruys de Matanca, the

champion of the Muſarabic liturgy, was victorious. But the queen and archbiſhop of Toledo, who favoured the other form, inſiſted on having the matter ſubmitted to another trial, and had intereſt enough to prevail in a requeſt, inconſiſtent with the laws of combat, which being conſidered as an appeal to God, the deciſion ought to have been acquieſced in as final. A great fire was kindled. A copy of each liturgy was caſt into the flames. It was agreed that the book which ſtood this proof, and remained untouched, ſhould be received in all the churches of Spain. The Muſarabic liturgy triumphed likewiſe in this trial, and if we may believe Roderigo de Toledo, remained unhurt by the fire, when the other was reduced to aſhes. The queen and archbiſhop had power or art ſufficient to elude this deciſion alſo, and the uſe of the Muſarabic form of devotion was permitted only in certain churches. A determination no leſs extraordinary than the whole tranſaction. Roger de Toledo, quoted by P. Orleans, Hiſt. de Revol. d'Eſpagne, tom. i. p. 417. Mariana, lib. i. c. 18. vol. i. p. 378.—A remarkable proof of the general uſe of trial by combat, and of the predilection for that mode of deciſion, occurs in the laws of the Lombards. It was a cuſtom in the middle ages, that any perſon might ſignify publicly the law to which he choſe to be ſubjected; and by the preſcriptions of that law he was obliged to regulate his tranſactions, without being bound to comply with any practice authorized by other codes of law. Perſons who had ſubjected themſelves to the Roman law, and adhered to the ancient juriſprudence, as far as any knowledge of it was retained in thoſe ages of ignorance, were exempted from paying any regard to the forms of proceedings eſtabliſhed by the laws of the Burgundians, Lombards, and other barbarous people. But the emperor Otho, in direct contradiction to this received maxim, ordained, "That all perſons, under whatever law they lived, even although it were the Roman law, ſhould be bound to conform to the edicts concerning the trial by combat." Leg. Longob. lib. ii. tit. 55. § 38. While the trial by judicial combat ſubſiſted, proof by charters, contracts, or other deeds, became ineffectual; and even this ſpecies of written evidence, calculated to render the proceedings of courts certain and deciſive, was eluded. When a charter or other inſtrument was produced by one of the parties, his opponent might challenge it, affirm that it was falſe and forged, and offer to prove this by combat. Leg. Longob. ib. § 34. It is true, that among the reaſons enumerated by Beaumanoir, on account of which judges might refuſe to permit a trial by combat, one is, "If the point in conteſt can be clearly proved or aſcertained by other evidence." Couſt. de Beauv. ch. 63. p. 323. But that regulation removed the evil only a ſingle ſtep. For the party who ſuſpected that a witneſs was about to depoſe in a manner unfavourable to his cauſe, might accuſe him of being ſuborned, give him the lie, and challenge him to combat; if the witneſs was vanquiſhed in battle, no other evidence could be admitted, and the party by whom he was ſummoned to appear loſt his cauſe. Leg. Baivar. tit. 16. § 2. Leg. Burgund. tit. 45. Beauman. ch. 61. p.

315. The reaſon given for obliging a witneſs to accept of a defiance, and to defend himſelf by combat, is remarkable, and contains the ſame idea which is ſtill the foundation of what is called the point of honour; "for it is juſt, that if any one affirms that he perfectly knows the truth of any thing, and offers to give oath upon it, that he ſhould not heſitate to maintain the veracity of his affirmation in combat." Leg. Burgund. tit. 45.

That the trial by judicial combat was eſtabliſhed in every country of Europe, is a fact well known, and requires no proof. That this mode of deciſion was frequent, appears not only from the codes of ancient laws which eſtabliſhed it, but from the earlieſt writers concerning the practice of law in the different nations of Europe. They treat of this cuſtom at great length; they enumerate the regulations concerning it with minute accuracy; and explain them with much ſolicitude. It made a capital and extenſive article in juriſprudence. There is not any one ſubject in their ſyſtem of law, which Beaumanoir, Defontaines, or the compilers of the Aſſiſes de Jeruſalem, ſeem to have conſidered as of greater importance; and none upon which they have beſtowed ſo much attention. The ſame obſervation will hold with reſpect to the early authors of other nations. It appears from Madox, that trials of this kind were ſo frequent in England, that fines, paid on theſe occaſions, made no inconſiderable branch of the king's revenue. Hiſt. of the Exchеq. vol. i. p. 349 A very curious account of a judicial combat between Meſire Robert de Beaumanoir, and Meſire Pierre Tournemine, in preſence of the Duke of Bretagne, A. D. 1385, is publiſhed by Morice, Mem. pour ſervir de preuves a l'Hiſt. de Bretagne, tom. ii. p. 498. All the formalities obſerved in ſuch extraordinary proceedings are there deſcribed more minutely than in any ancient monument which I have had an opportunity of conſidering. Tournemine was accuſed by Beaumanoir of having murdered his brother. The former was vanquiſhed, but was ſaved from being hanged upon the ſpot, by the generous interceſſion of his antagoniſt. A good account of the origin of the laws concerning judicial combat is publiſhed in the hiſtory of Pavia, by Bernardo Sacci, lib. ix. c. 8. in Græv. Theſ. Antiquit. Ital. vol. iii. 743.

This mode of trial was ſo acceptable, that eccleſiaſtics, notwithſtanding the prohibitions of the church, were conſtrained not only to connive at the practice, but to authorize it. A remarkable inſtance of this is produced by Paſquier Recherches, lib. iv. ch. i. p. 350. The abbot Wittikindus, whoſe words I have produced in this note, conſidered the determination of a point in law by combat as the beſt and moſt honourable mode of deciſion. In the year 978, a judicial combat was fought in the preſence of the emperor. The archbiſhop Aldebert adviſed him to terminate a conteſt which had ariſen between two noblemen of his court, by this mode of deciſion. The vanquiſhed combatant, though a perſon of high rank, was beheaded on the ſpot. Chronic. Ditmari Epiſc. Merib. chez Bouquet Recueil des Hiſt. tom. x. p. 121. Queſtions concerning the property of churches and monaſteries were decided by

combat. In the year 961, a controverſy concerning the church of St. Medard, whether it belonged to the abbey of Beaulieu or not, was terminated by judicial combat. Bouquet Recueil des Hiſt. tom. ix. p. 729. Ibid. p. 612, &c. The emperor Henry I. declares, that this law, authorizing the practice of judicial combats, was enacted with conſent and applauſe of many faithful biſhops. Ibid. p. 231. So remarkably did the martial ideas of thoſe ages prevail over the genius and maxims of the canon law, which in other inſtances was in the higheſt credit and authority with eccleſiaſtics. A judicial combat was appointed in Spain, by Charles V. A. D. 1522. The combatants fought in the emperor's preſence, and the battle was conducted with all the rites preſcribed by the ancient laws of chivalry. The whole tranſaction is deſcribed at great length by Pontus Heuterus Rer. Auſtriac. lib. viii. c. 17. p. 205.

The laſt inſtance which occurs in the hiſtory of France, of a judicial combat authoriſed by the magiſtrate, was the famous one between M. Jarnac and M. de la Chaiſtaignerie, A. D. 1547. A trial by combat was appointed in England, A. D. 1571, under the inſpection of the judges in the court of Common Pleas; and tho' it was not carried to the ſame extremity with the former, queen Elizabeth having interpoſed her authority, and enjoined the parties to compound the matter, yet, in order to preſerve their honour, the liſts were marked out, and all the forms previous to the combat were obſerved with much ceremony. Spelm. Gloſſ. voc. *Campus*, p. 103. In the year 1631, a judicial combat was appointed between Donald Lord Rea, and David Ramſay, Eſq. by the authority of the lord high conſtable, and earl marſhal of England; but that quarrel likewiſe terminated without bloodſhed, being accommodated by Charles I. Another inſtance occurs ſeven years later. Ruſhworth in Obſervations on the Statutes, &c. p. 266.

## NOTE XXIII. Sect. I. p. 61. [Z]

The text contains the great outlines which mark the courſe of private and public juriſdiction in the ſeveral nations of Europe. I ſhall here follow more minutely the various ſteps of this progreſs, as the matter is curious and important enough to merit this attention. The payment of a fine by way of ſatisfaction to the perſon or family injured, was the firſt device of a rude people, in order to check the career of private reſentment, and to extinguiſh thoſe *faidæ*, or deadly feuds, which were proſecuted among them with the utmoſt violence. This cuſtom may be traced back to the ancient Germans. Tacit. de Morib. Germ. c. 21. and prevailed among other uncivilized nations. Many examples of this are collected by the ingenious and learned author of Hiſtorical Law Tracts, vol. i. p. 41. Theſe fines were aſcertained and levied in three different manners. At firſt they were ſettled by voluntary agreement between the parties at variance. When their rage began to ſubſide, and they felt the bad effects of their continuing in enmity, they came to terms of concord, and the ſatisfaction made was called a *compoſition*, implying that it was fixed by mutual conſent. De l'E-

ſprit des Loix, lib. xxx. c. 19. It is apparent from ſome of the more ancient codes of laws, that at the time when theſe were compiled, matters ſtill remained in that ſimple ſtate. In certain caſes, the perſon who had committed an offence was left expoſed to the reſentment of thoſe whom he had injured, until he ſhould recover their favour, quoquo modo potuerit. Lex Friſion. tit. 11. § 1. The next mode of levying theſe fines was by the ſentence of arbiters. An arbiter is called in the Regiam Majeſtatem amicabilis compoſitor, lib. xi. c. 4. § 10. He could eſtimate the degree of offence with more impartiality than the parties intereſted, and determine with greater equity what ſatisfaction ought to be demanded. It is difficult to bring an authentic proof of a cuſtom previous to the records preſerved in any nation of Europe. But one of the Formulæ Andegavenſes compiled in the ſixth century, ſeems to allude to a tranſaction carried on, not by the authority of a judge, but by the mediation of arbiters choſen by mutual conſent. Bouquet Recueil des Hiſtor. tom. iv. p. 566. But as an arbiter wanted authority to enforce his deciſions, judges were appointed with compulſive power to oblige both parties to acquieſce in their deciſions. Previous to this laſt ſtep, the expedient of paying compoſitions was an imperfect remedy againſt the pernicious effects of private reſentment. As ſoon as this important change was introduced, the magiſtrate, putting himſelf in place of the perſon injured, aſcertained the compoſition with which he ought to reſt ſatisfied. Every poſſible injury that could occur in the intercourſe of civil ſociety was conſidered and eſtimated, and the compoſitions due to the perſon aggrieved were fixed with ſuch minute attention, as diſcovers, in moſt caſes, amazing diſcernment and delicacy; in ſome inſtances, unaccountable caprice. Beſides the compoſition payable to the private party, a certain ſum called a *fredum*, was paid to the king or ſtate, as Tacitus expreſſes it, or to the fiſcus, in the language of the barbarous laws. Some authors blending the refined ideas of modern policy with their reaſonings concerning ancient tranſactions, have imagined that the *fredum* was a compenſation due to the community, on account of the violation of the public peace. But it is manifeſtly nothing more than the price paid to the magiſtrate for the protection which he afforded againſt the violence of reſentment. The enacting of this was a conſiderable ſtep towards improvement in criminal juriſprudence. In ſome of the more ancient codes of laws, the *freda* are altogether omitted, or ſo ſeldom mentioned, that it is evident they were but little known. In the later codes, the *fredum* is as preciſely ſpecified as the compoſition. In common caſes it was equal to the third part of the compoſition. Capitul. vol. i. p. 52. In ſome extraordinary caſes, where it was more difficult to protect the perſon who had committed violence, the *fredum* was augmented. Capitul. vol. i. p. 515. Theſe *freda* made a conſiderable branch in the revenues of the barons; and in whatever diſtrict territorial juriſdiction was granted, the royal judges were prohibited from levying any *freda*. In explaining the nature of the *fredum*, I have followed in a great meaſure the opinion of M. de Monteſquieu,

though I know that ſeveral learned antiquaries have taken the word in a different ſenſe. De l'Eſprit des Loix, liv. xxx. c. 20, &c. The great object of judges was to compel the one party to give, and the other to accept, the ſatisfaction preſcribed. They multiplied regulations to this purpoſe, and enforced them by grievous penalties. Leg. Longob. lib. i. tit. 9. § 34. Ib. tit. 37. § 1, 2. Capitul. vol. i. p. 371. § 22. The perſon who received a compoſition was obliged to ceaſe from all farther hoſtility, and to confirm his reconciliation with the adverſe party by an oath. Leg. Longob. lib. i. tit. 9 § 8. As an additional and more permanent evidence of reconciliation, he was required to grant a bond of ſecurity to the perſon from whom he received a compoſition, abſolving him from all farther proſecution. Marculfus, and the other collectors of ancient writs, have preſerved ſeveral different forms of ſuch bonds. Marc. lib. xi. § 18. Append. § 23. Form. Sirmondicæ, § 39. The *Letters of Slanes*, known in the law of Scotland, are perfectly ſimilar to theſe bonds of ſecurity. By the Letters of Slanes, the heirs and relations of a perſon who had been murdered, bound themſelves, in conſideration of an *aſſythment* or compoſition paid to them, to forgive, "paſs over, and for ever forget, and in oblivion inter, all rancour, malice, revenge, prejudice, grudge, and reſentment, that they have or may conceive againſt the aggreſſor or his poſterity, for the crime which he had committed, and diſcharge him of all action, civil or criminal, againſt him or his eſtate, for now and ever." Syſtem of Stiles by Dallas of St. Martin's, p. 862. In the ancient form of Letters of Slanes, the private party not only forgives and forgets, but pardons and grants remiſſion of the crime. This practice, Dallas, reaſoning according to the principles of his own age, conſiders as an encroachment on the rights of ſovereignty, as none, ſays he, could pardon a criminal but the king. Ibid. But, in early and rude times, the proſecution, the puniſhment, and the pardon of criminals, were all deeds of the private perſon who was injured. Madox has publiſhed two writs, one in the reign of Edward I. the other in the reign of Edward III. by which private perſons grant a releaſe or pardon of all treſpaſſes, felonies, robberies, and murders committed. Formul. Anglican. No. 702, 705. In the laſt of theſe inſtruments, ſome regard ſeems to be paid to the rights of the ſovereign, for the pardon is granted *en quant que en nous eſt.* Even after the authority of the magiſtrate was interpoſed in puniſhing crimes, the puniſhment of criminals is long conſidered chiefly as a gratification to the reſentment of the perſons who have been injured. In Perſia a murderer is ſtill delivered to the relations of the perſon whom he has ſlain, who put him to death with their own hands. If they refuſe to accept of a ſum of money as a compenſation, the ſovereign, abſolute as he is, cannot pardon the murderer. Voyages de Chardin, iii. p. 417, edit. 1735, 4to. Voyages de Tavernier, liv. v. c. 5, 10. Among the Arabians, though one of the firſt poliſhed people in the Eaſt, the ſame cuſtom ſtill ſubſiſts. Deſcription de l'Arabie par M. Niebuhr, p. 28. By a law in the kingdom of Aragon, as late as the year 1564, the pu-

niſhment of one condemned to death cannot be mitigated but by conſent of the parties who have been injured. Fueros & Obſervancias del Reyno de Aragon, p. 204. 6.

If after all the engagements to ceaſe from enmity which I have mentioned, any perſon renewed hoſtilities, and was guilty of any violence, either towards the perſon from whom he had received a compoſition, or towards his relations and heirs, this was deemed a moſt heinous crime, and puniſhed with extraordinary rigour. It was an act of direct rebellion againſt the authority of the magiſtrate, and was repreſſed by the interpoſition of all his power. Leg. Longob. lib. i. tit. 9. § 8. 34. Capit. vol. i. p. 371. §. 22. Thus the avenging of injuries was taken out of private hands, a legal compoſition was eſtabliſhed, and peace and amity were reſtored, under the inſpection, and by the authority of a judge. It is evident that at the time when the barbarians ſettled in the provinces of the Roman empire, they had fixed judges eſtabliſhed among them with compulſive authority. Perſons veſted with this character are mentioned by the earlieſt hiſtorians. Du Cange, voc. *Judices*. The right of territorial juriſdiction was not altogether an uſurpation of the feudal barons, or an invaſion of the prerogative of the ſovereign. There is good reaſon to believe, that the powerful leaders, who ſeized different diſtricts of the countries which they conquered, and kept poſſeſſion of them as *allodial* property, aſſumed from the beginning the right of juriſdiction, and exerciſed it within their own territories. This juriſdiction was ſupreme, and extended to all cauſes. The cleareſt proofs of this are produced by M. Bouquet. Le Droit publique de France eclairci, &c. tom. i. p. 206, &c. The privilege of judging his own vaſſals, appears to have been originally a right inherent in every baron who held a fief. As far back as the archieves of nations can conduct us with any certainty, we find the juriſdiction and fief united. One of the earlieſt charters to a layman which I have met with, is that of Ludovicus Pius, A. D. 814. And it contains the right of territorial juriſdiction, in the moſt expreſs and extenſive terms. Capitul. vol. ii. p. 1405. There are many charters to churches and monaſteries of a more early date, containing grants of a ſimilar juriſdiction, and prohibiting any royal judge to enter the territories of thoſe churches or monaſteries, or to perform any act of judicial authority there. Bouquet Recueil des Hiſt. tom. iv. p. 628, 631, 633, tom. v. p. 703, 710, 752, 762. Muratori has publiſhed many very ancient charters containing the ſame immunities. Antiq. Ital. Diſſert. lxx. In moſt of theſe deeds, the royal judge is prohibited from exacting the *freda* due to the poſſeſſor of territorial juriſdiction, which ſhews that they conſtituted a valuable part of the revenue of each ſuperior lord at that juncture. The expence of obtaining a ſentence in a court of juſtice during the middle ages was ſo conſiderable, that this circumſtance alone was ſufficient to render men unwilling to decide any conteſt in judicial form. It appears from a charter in the thirteenth century, that the baron who had the right of juſtice, received the fifth part of the value of every ſubject, the property

of which was tried and determined in his court. If, after the commencement of a law-ſuit, the parties terminated the conteſt in an amicable manner, or by arbitration, they were nevertheleſs bound to pay the fifth part of the ſubject conteſted, to the court before which the ſuit had been brought. Hiſt. de Dauphiné, Geneve, 1722, tom. i. p. 22. Similar to this is a regulation in the charter of liberty granted to the town of Friburg, A. D. 1120. If two of the citizens ſhall quarrel, and if one of them ſhall complain to the ſuperior lord or to his judge, and after commencing the ſuit, ſhall be privately reconciled to his adverſary, the judge, if he does not approve of this reconciliation, may compel him to go on with his law ſuit; and all who were preſent at the reconciliation ſhall forfeit the favour of the ſuperior lord. Hiſtoria Zaringo Badenſis. Auctor. Jo. Dan. Schoepflinus. Carolſr. 1765, 4to. vol. v. p. 55.

What was the extent of that juriſdiction which thoſe who held fiefs poſſeſſed originally, we cannot now determine with certainty. It is evident that, during the diſorders which prevailed in every kingdom of Europe, the great vaſſals took advantage of the feebleneſs of their monarchs, and enlarged their juriſdictions to the utmoſt. As early as the tenth century, the more powerful barons had uſurped the right of deciding all cauſes, whether civil or criminal. They had acquired the *High Juſtice* as well as the *Low*. Eſtabl. de St. Louis, lib. i. c. 24, 25. Their ſentences were final, and there lay no appeal from them to any ſuperior court. Several ſtriking inſtances of this are collected by Bruſſel. Traité des Fiefs, liv. iii. c. 11, 12, 13. Not ſatisfied with this, the more potent barons got their territories erected into *Regalities*, with almoſt every royal prerogative and juriſdiction. Inſtances of theſe were frequent in France. Bruſſ. ib. In Scotland, where the power of the feudal nobles became exorbitant, they were very numerous. Hiſtorical Law Tracts, vol. i. tract vi. Even in England, though the authority of the Norman kings circumſcribed the juriſdiction of the barons within more narrow limits than in any other feudal kingdom, ſeveral counties palatine were erected, into which the king's judges could not enter, and no writ could come in the king's name, until it received the ſeal of the county palatine. Spelman. Gloſſ. voc. *Comites Palatini;* Blackſtone's Commentaries on the Laws of England, vol. iii. p. 78. Theſe lords of Regalities had a right to claim or reſcue their vaſſals from the king's judges, if they aſſumed any juriſdiction over them. Bruſſel, ubi ſupra. In the law of Scotland this privilege was termed the right of *repledging;* and the frequency of it not only interrupted the courſe of juſtice, but gave riſe to great diſorders in the exerciſe of it. Hiſt. Law Tracts, ib. The juriſdiction of the counties palatine ſeems to have been productive of like inconveniencies in England.

The remedies provided by princes againſt the bad effects of theſe uſurpations of the nobles, or inconſiderate grants of the crown, were various, and gradually applied. Under Charlemagne and his immediate deſcendents, the regal prerogative ſtill

retained great vigour, and the *Duces*, *Comites*, and *Miſſi Dominici*, the former of whom were ordinary and fixed judges, the latter extraordinary and itinerant judges, in the different provinces of their extenſive dominions, exerciſed a juriſdiction co-ordinate with the barons in ſome caſes, and ſuperior to them in others. Du Cange, voc. *Dux*, *Comites*, & *Miſſi*. Murat. Antiq. Diſſert. viii. & ix. But under the feeble race of monarchs who ſucceeded them, the authority of the royal judges declined, and the barons acquired that unlimited juriſdiction which has been deſcribed. Louis VI. of France attempted to revive the function of the *Miſſi Dominici* under the title of *Juges des Exempts*, but the barons were become too powerful to bear ſuch an encroachment on their juriſdiction, and he was obliged to deſiſt from employing them. Henaut Abregé Chron. tom. ii. p. 730. His ſucceſſor (as has been obſerved) had recourſe to expedients leſs alarming. The appeal *de defaute de droit*, or on account of the refuſal of juſtice, was the firſt which was attended with any conſiderable effect. According to the maxims of feudal law, if a baron had not as many vaſſals as enabled him to try by their peers the parties who offered to plead in his court, or if he delayed or refuſed to proceed in the trial, the cauſe might be carried, by appeal, to the court of the ſuperior lord of whom the baron held, and tried there. De l'Eſprit des Loix, liv. xxviii. c. 28. Du Cange, voc. *Defectus Juſtitiæ*. The number of peers or aſſeſſors in the courts of barons was frequently very conſiderable. It appears from a criminal trial in the court of the viſcount de Lautrec, A. D. 1299, that upwards of two hundred perſons were preſent, and aſſiſted in the trial, and voted in paſſing judgment. Hiſt de Langued. par D. D. de Vic & Vaiſette, tom. iv. Preuves, p. 114. But as the right of juriſdiction had been uſurped by many inconſiderable barons, they were often unable to hold courts. This gave frequent occaſion to ſuch appeals, and rendered the practice familiar. By degrees ſuch appeals began to be made from the courts of the more powerful barons, and it is evident, from a deciſion recorded by Bruſſel, that the royal judges were willing to give countenance to any pretext for them. Traité des Fiefs, tom. i. p. 235, 261. This ſpecies of appeal had leſs effect in abridging the juriſdiction of the nobles, than the appeal on account of the injuſtice of the ſentence. When the feudal monarchs were powerful, and their judges poſſeſſed extenſive authority, ſuch appeals ſeem to have been frequent. Capitul. vol. i. p. 175, 180; and they were made in a manner ſuitable to the rudeneſs of a ſimple age. The perſons aggrieved reſorted to the palace of their ſovereign, and with outcries and loud noiſe called to him for redreſs. Capitul. lib. iii. c. 59. Chronic. Laterberginenſe ap. Mencken. Script. German. vol. ii. p. 284. b. In the kingdom of Aragon, the appeals to the *Juſtiza* or ſupreme judge were taken in ſuch a form as ſuppoſed the appellant to be in immediate danger of death, or of ſome violent outrage; he ruſhed into the preſence of the judge, crying with a loud voice, *Avi*, *Avi*, *Fuerza*, *Fuerza*, thus imploring (as it were) the inſtant interpoſition of that ſupreme judge in order to ſave

him. Hier. Blanca Comment. de rebus Aragon. ap. Script. Hiſ. panic. Piſtorii, vol. iii. p. 753. The abolition of the trial by combat facilitated the revival of appeals of this kind. The effects of the ſubordination which appeals eſtabliſhed, in introducing attention, equity, and conſiſtency of deciſion into courts of judicature, were ſoon conſpicuous; and almoſt all cauſes of importance were carried to be finally determined in the king's courts. Bruſſel, tom. i. 252. Various circumſtances which contributed towards the introduction and frequency of ſuch appeals are enumerated De l'Eſprit des Loix, liv. xxviii. c. 27. Nothing, however, was of ſuch effect as the attention which monarchs gave to the conſtitution and dignity of their courts of juſtice. It was the ancient cuſtom for the feudal monarchs to preſide themſelves in their courts, and to adminiſter juſtice in perſon. Marculf. lib. i. § 25. Murat. Diſſert. xxxi. Charlemagne, whilſt he was dreſſing, uſed to call parties into his preſence, and having heard and conſidered the ſubject of litigation, gave judgment concerning it. Eginhartus, Vita Caroli Magni, cited by Madox, Hiſt. of Exchequer, vol. i. p. 91. This trial and deciſion of cauſes by the ſovereigns themſelves could not fail of rendering their courts reſpectable. St. Louis, who encouraged to the utmoſt the practice of appeals, revived this ancient cuſtom, and adminiſtered juſtice in perſon with all the ancient ſimplicity. "I have often ſeen the ſaint," ſays Joinville, "ſit under the ſhade of an oak in the wood of Vincennes, when all who had any complaint freely approached him. At other times he gave orders to ſpread a carpet in a garden, and ſeating himſelf upon it, heard the cauſes that were brought before him." Hiſt. de St Louis, p. 13. edit. 1761. Princes of inferior rank, who poſſeſſed the right of juſtice, ſometimes diſpenſed it in perſon, and preſided in their tribunals. Two inſtances of this occur with reſpect to the Dauphines of Vienne. Hiſt. de Dauphiné, tom. i. p. 18. tom. ii. p. 257. But as kings and princes could not decide every cauſe in perſon, nor bring them all to be determined in the ſame court; they appointed *Baillis*, with a right of juriſdiction, in different diſtricts of their kingdom. Theſe poſſeſſed powers ſomewhat ſimilar to thoſe of the ancient *Comites*. It was towards the end of the twelfth century and beginning of the thirteenth, that this office was firſt inſtituted in France. Bruſſel, liv. ii. c. 35. When the king had a court eſtabliſhed in different quarters of his dominions, this invited his ſubjects to have recourſe to it. It was the private intereſt of the *Baillis*, as well as an object of public policy, to extend their juriſdiction They took advantage of every defect in the rights of the barons, and of every error in their proceedings, to remove cauſes out of their courts, and to bring them under their own cognizance. There was a diſtinction in the feudal law, and an extremely ancient one, between the high juſtice and the low. Capitul. 3. A. D. 812. § 4. A D. 815. §. 3. Eſtabl. de St. Louis, liv. i c. 40. Many barons poſſeſſed the latter juriſdiction who had no title to the former. The former included the right of trying crimes of every kind, even the higheſt; the latter was confined to petty treſpaſſes.

This furniſhed endleſs pretexts for obſtructing, reſtraining, and reviewing the proceedings in the baron courts. Ordon. ii. 457 § 25. 458. § 29.——A regulation of greater importance ſucceeded the inſtitution of *Baillis*. The king's ſupreme court or parliament was rendered fixed as to the place, and conſtant as to the time of its meetings In France, as well as in the other feudal kingdoms, the king's court of juſtice was originally ambulatory, followed the perſon of the monarch, and was held only during ſome of the great feſtivals. Philip Auguſtus, A.D. 1305, rendered it ſtationary at Paris, and continued its terms during the greater part of the year. Paſquier Recherches, liv. ii. c. 2 & 3, &c. Ordon. tom. i. p. 366. § 62. He and his ſucceſſors veſted extenſive powers in that court; they granted the members of it ſeveral privileges and diſtinctions which it would be tedious to enumerate. Paſquier, ib. Velly Hiſt. de France, tom. vii. p. 307. Perſons eminent for integrity and ſkill in law were appointed judges there. Ib. By degrees the final deciſion of all cauſes of importance was brought into the parliament of Paris, and the other parliaments, which adminiſtered juſtice in the king's name, in different provinces of the kingdom. This juriſdiction, however, the parliament of Paris acquired very ſlowly, and the great vaſſals of the crown made violent efforts in order to obſtruct the attempts of this parliament to extend its authority. Towards the cloſe of the thirteenth century, Philip the Fair was obliged to prohibit his parliament from taking cognizance of certain appeals brought into it from the courts of the count of Bretagne, and to recognize and reſpect his right of ſupreme and final juriſdiction. Memoires pour ſervir de Preuves a l'Hiſtoire de Bretagne par Morice, tom. i. p. 1037, 1074. Charles VI. at the end of the following century was obliged to confirm the rights of the dukes of Bretagne in ſtill more ample form. Ibid. tom. ii. p. 580, 581. So violent was the oppoſition of the barons to this right of appeal, which they conſidered as fatal to their privileges and power, that the authors of the *Encyclopedie* have mentioned ſeveral inſtances in which barons put to death, or mutilated, ſuch perſons as ventured to appeal from the ſentences pronounced in their courts, to the parliament of Paris, tom. xii. art. *Parlement*, p. 25.

The progreſs of juriſdiction in the other feudal kingdoms was in a great meaſure ſimilar to that which we have traced in France. In England the territorial juriſdiction of the barons was both ancient and extenſive. Leg. Edw. Conf. No. 5 and 9. After the Norman conqueſt it became more ſtrictly feudal; and it is evident from facts recorded in the Engliſh hiſtory, as well as from the inſtitution of Counties Palatine, which I have already mentioned, that the uſurpations of the nobles in England were not leſs bold or extenſive than thoſe of their contemporaries on the continent. The ſame expedients were employed to circumſcribe or aboliſh thoſe dangerous juriſdictions. William the Conqueror eſtabliſhed a conſtant court in the hall of his palace; from which the four courts now entruſted with the adminiſtration of juſtice in England took their riſe. Henry II. divided his kingdom into

ſix circuits, and ſent itinerant judges to hold their courts in them at ſtated ſeaſons. Blackſtone's Commentaries on the Laws of England, vol. iii. 57. Juſtices of the peace were appointed in every county by ſubſequent monarchs; to whoſe juriſdiction the people gradually had recourſe in many civil cauſes. The privileges of the Counties Palatine were gradually limited; with reſpect to ſome points they were aboliſhed; and the adminiſtration of juſtice was brought into the king's courts, or before judges of his appointment. The ſeveral ſteps taken for this purpoſe are enumerated in Dalrymple's Hiſtory of Feudal Property chap. vii.

In Scotland the uſurpations of the nobility were more exorbitant than in any other feudal kingdom. The progreſs of their encroachments, and the methods taken by the crown to limit or aboliſh their territorial and independent juriſdictions, both which I had occaſion to conſider and explain in a former work, differed very little from thoſe of which I have now given the detail. Hiſtory of Scotland, vol. i. p. 45.

I ſhould perplex myſelf and my readers in the labyrinth of German juriſprudence, if I were to attempt to delineate the progreſs of juriſdiction in the empire, with a minute accuracy. It is ſufficient to obſerve, that the authority which the Aulic council and Imperial chamber now poſſeſs, took its riſe from the ſame deſire of redreſſing the abuſes of territorial juriſdiction, and was acquired in the ſame manner that the royal courts attained influence in other countries of Europe. All the important facts with reſpect to both theſe particulars may be found in Phil. Datt, de pace publica Imperii, lib. iv. The capital articles are pointed out in Pfeffel Abregé de l'Hiſtoire & Droit publique d'Allemagne, p. 556, 581. and in Traite du Droit publique de l'Empire par M. le Coq. de Villeray. The two laſt treatiſes are of great authority, having been compoſed under the eye of M. Schoepflin of Straſburg, one of the ableſt public lawyers in Germany.

## NOTE XXIV. Sect. I. p. 63. [AA].

It is not eaſy to fix with preciſion the period at which eccleſiaſtics firſt began to claim exemption from the civil juriſdiction. It is certain, that during the early and pureſt ages of the church, they pretended to no ſuch immunity. The authority of the civil magiſtrate extended to all perſons, and to all cauſes. This fact has not only been clearly eſtabliſhed by Proteſtant authors, but is admitted by many Roman Catholics of eminence, and particularly by the writers in defence of the liberties of the Gallican church. There are ſeveral original papers publiſhed by Muratori, which ſhew that, in the ninth and tenth centuries, cauſes of the greateſt importance relating to eccleſiaſtics were ſtill determined by civil judges. Antiq. Ital. vol. v. diſſert. lxx. Proofs of this are produced likewiſe by M. Houard, Anciennes Loix des François, &c. vol. i. p. 209. Eccleſiaſtics did not ſhake off all at once their ſubjection to civil courts. This privilege, like their other uſurpations, was acquired ſlowly, and ſtep by ſtep. This exemption ſeems at firſt to have been merely an act of complai-

ſance, flowing from veneration for their character. Thus from a charter of Charlemagne in favour of the church of Mans, A. D. 796, to which M. l'Abbe de Foy refers in his Notice de Diplomes, tom. i. p. 201. that monarch directs his judges, if any difference ſhould ariſe between the adminiſtrators of the revenues of that church and any perſon whatever, not to ſummon the adminiſtrators to appear in mallo publico: but firſt of all to meet with them, and to endeavour to accommodate the difference in an amicable manner. This indulgence was in proceſs of time improved into a legal exemption; which was founded on the ſame ſuperſtitious reſpect of the laity for the clerical character and function. A remarkable inſtance of this occurs in a charter of Frederic Barbaroſſa, A. D. 1172, to the monaſtery of Altenburg. He grants them judicium non tantum ſanguinolentis plagæ, ſed vitæ & mortis; he prohibits any of the royal judges from diſturbing their juriſdiction; and the reaſon which he gives for this ample conceſſion is, nam quorum, ex Dei gratia, ratione divini miniſterii onus leve eſt, & jugum ſuave; nos penitus nolumus illos oppreſſionis contumelia, vel manu Laica, fatigari. Mencken. Script. rer. Germ. vol. iii. p. 1067.

It is not neceſſary for illuſtrating what is contained in the text, that I ſhould deſcribe the manner in which the code of the canon law was compiled, or ſhew that the doctrines in it moſt favourable to the power of the clergy, are founded on ignorance, or ſupported by fraud or forgery. The reader will find a full account of theſe in Gerard. Van Maſtricht. Hiſtoria Juris Eccleſiaſtici, & in Science de Gouvernement par M. Real, tom. vii. c. 1 & 3. § 2, 3. &c. The hiſtory of the progreſs and extent of eccleſiaſtical juriſdiction, with an account of the arts which the clergy employed in order to draw cauſes of every kind into the ſpiritual courts, is no leſs curious, and would throw great light upon many of the cuſtoms and inſtitutions of the dark ages; but it is likewiſe foreign from the preſent ſubject. Du Cange in his Gloſſary, voc. *Curia Chriſtianitatis*, has collected moſt of the cauſes with reſpect to which the clergy arrogated an excluſive juriſdiction, and refers to the authors, or original papers, which confirm his obſervations. Giannone in his Civil Hiſtory of Naples, lib. xix. § 3. has arranged theſe under proper heads, and ſcrutinizes the pretenſions of the church with his uſual boldneſs and diſcernment. M. Fleury obſerves, that the clergy multiplied the pretexts for extending the authority of the ſpiritual courts with ſo much boldneſs, that it was ſoon in their power to withdraw almoſt every perſon and every cauſe from the juriſdiction of the civil magiſtrate. Hiſt. Eccleſ. tom. xix. Diſc. Prelim. 16. But how ill-founded ſoever the juriſdiction of the clergy may have been, or whatever might be the abuſes to which their manner of exerciſing it gave riſe, the principles and forms of their juriſprudence were far more perfect than that which was known in the civil courts. It ſeems to be certain that eccleſiaſtics never ſubmitted, during any period in the middle ages, to the laws contained in the codes of the barbarous nations, but were governed entirely by the Roman law.

They regulated all their tranſactions by ſuch of its maxims as were preſerved by tradition, or were contained in the Theodoſian code, and other books extant among them. This we learn from a cuſtom which prevailed univerſally in thoſe ages. Every perſon was permitted to chooſe among the various codes of laws then in force, that to which he was willing to conform. In any tranſaction of importance, it was uſual for the perſons contracting to mention the law to which they ſubmitted, that it might be known how any controverſy that ſhould ariſe between them was to be decided. Innumerable proofs of this occur in the charters of the middle ages. But the clergy conſidered it as ſuch a valuable privilege of their order to be governed by the Roman law, that when any perſon entered into holy orders, it was uſual for him to renounce the code of laws to which he had been formerly ſubject, and to declare that he now ſubmitted to the Roman law. Conſtat me Johannem clericum, filium quondam Verandi, qui profeſſus ſum, ex natione mea, lege vivere Langobardorum, ſed tamen, pro honore eccleſiaſtico, lege nunc videor vivere Romana. Charta, A. D. 1072. Farulfus preſbyter qui profeſſus ſum, more ſacerdotii mei, lege vivere Romana. Charta, A.D. 1075. Muratori Antichita Eſtenſi. vol. i. p. 78. See likewiſe Houard Anciennes Lois des François, &c. vol. i. p. 203.

The code of the canon law began to be compiled early in the ninth century. Mem. de l'Acad. des Inſcript. tom. xviii. p. 346, &c. It was above two centuries after that before any collection was made of thoſe cuſtoms, which were the rule of judgments in the courts of the barons. Spiritual judges decided of courſe, according to written and known laws: Lay judges, left without any fixed guide, were directed by looſe traditionary cuſtoms. But beſides this general advantage of the canon law, its forms and principles were more conſonant to reaſon, and more favourable to the equitable deciſion of every point in controverſy, than thoſe which prevailed in lay courts. It appears from Notes XXI. and XXIII. concerning private wars, and the trial by combat, that the whole ſpirit of eccleſiaſtical juriſprudence was adverſe to thoſe ſanguinary cuſtoms which were deſtructive of juſtice; and the whole force of eccleſiaſtical authority was exerted to aboliſh them, and to ſubſtitute trials by law and evidence in their room. Almoſt all the forms in lay courts, which contribute to eſtabliſh, and continue to preſerve order in judicial proceedings, are borrowed from the canon law. Fleury Inſtit. du droit canon. part iii. c. 6. p. 52. St. Louis, in his Eſtabliſſemens, confirms many of his new regulations concerning property, and the adminiſtration of juſtice, by the authority of the canon law, from which he borrowed them. Thus, for inſtance, the firſt hint of attaching moveables for the recovery of a debt, was taken from the canon law. Eſtab. liv. ii. c. 21 and 40. And likewiſe the *ceſſio bonorum*, by a perſon who was inſolvent. Ibid. In the ſame manner, he eſtabliſhed new regulations with reſpect to the effects of perſons dying inteſtate, liv. i. c. 89. Theſe and many other ſalutary regulations the canoniſts borrowed from the Roman law. Many other examples might be produced of

more perfect juriſprudence in the canon law than was known in lay courts. For that reaſon it was deemed an high privilege to be ſubject to eccleſiaſtical juriſdiction. Among the many immunities, by which men were allured to engage in the dangerous expeditions for the recovery of the Holy Land, one of the moſt condeſirable was the declaring ſuch as took the Croſs to be ſubject only to the ſpiritual courts, and to the rules of deciſion obſerved in them. See Note XIII. and Du Cange, voc. *Crucis Privilegia*.

## NOTE XXV. Sect. I. p. 65. [BB].

The rapidity with which the knowledge and ſtudy of the Roman law ſpread over Europe is amazing. The copy of the Pandects was found at Amalphi, A. D. 1137. Irnerius opened a college of civil law at Bologna a few years after. Giann. Hiſt. book xi. c. 2. It began to be taught as a part of academical learning in different parts of France before the middle of the century. Vaccarius gave lectures on the civil law at Oxford, as early as the year 1147. A regular ſyſtem of feudal law, formed plainly in imitation of the Roman code, was compoſed by two Milaneſe lawyers about the year 1150. Gratian publiſhed the code of canon law, with large additions and emendations, about the ſame time. The earlieſt collection of thoſe cuſtoms, which ſerved as the rules of deciſion in the courts of juſtice, is the *Aſſiſes de Jeruſalem*. They were compiled, as the preamble informs us, in the year 1099, and are called Jus Conſuetudinarium quo regebatur regnum orientale. Willerm. Tyr. lib. xix. c. 2. But peculiar circumſtances gave occaſion to this early compilation. The victorious Cruſaders ſettled as a colony in a foreign country, and adventurers from all the different nations of Europe compoſed this new ſociety. It was neceſſary on that account to aſcertain the laws and cuſtoms which were to regulate the tranſactions of buſineſs, and the adminiſtration of juſtice among them. But in no country of Europe was there, at that time, any collection of cuſtoms, nor had any attempt been made to render law fixed. The firſt undertaking of that kind was by Glanville, Lord Chief Juſtice of England, in his Tractatus de Legibus & Conſuetudinibus Angliæ, compoſed about the year 1181. The Regiam Majeſtatem in Scotland, aſcribed to David I. ſeems to be an imitation, and a ſervile one, of Glanville. Several Scottiſh antiquaries, under the influence of that pious credulity, which diſpoſes men to aſſent, without heſitation, to whatever they deem for the honour of their native country, contend zealouſly, that the Regiam Majeſtatem is a production prior to the treatiſe of Glanville; and have brought themſelves to believe, that a nation, in a ſuperior ſtate of improvement, borrowed its laws and inſtitutions from one conſiderably leſs advanced in its political progreſs. The internal evidence (were it my province to examine it) by which this theory might be refuted, is, in my opinion, deciſive. The external circumſtances which have ſeduced Scottiſh authors into this miſtake, have been explained with ſo much preciſion and candour by Sir David Dalrymple, in his examination of ſome of the argu-

ments for the high antiquity of Regiam Majeſtatem, Edin. 1769, 4to. that it is to be hoped the controverſy will not be again revived. Pierre de Fontaines, who tells us, that he was the firſt who had attempted ſuch a work in France, compoſed his *Conſeil*, which contains an account of the cuſtoms of the country of Vermandois, in the reign of St. Louis, which began, A. D. 1226. *Beaumanoir*, the author of the *Couſtumes de Beauvoiſis*, lived about the ſame time. The Eſtabliſſemens of St. Louis, containing a large collection of the cuſtoms which prevailed within the royal domains, were publiſhed by the authority of that monarch. As ſoon as men became acquainted with the advantages of having written cuſtoms and laws, to which they could have recourſe on every occaſion, the practice of collecting them became common. Charles VII. of France, by an ordonnance, A. D. 1453, appointed the cuſtomary laws in every province of France to be collected and arranged. Velley and Villaret, Hiſtoire, tom. xvi. p. 113. His ſucceſſor, Louis XI. renewed the injunction. But this ſalutary undertaking hath never been fully executed, and the juriſprudence of the French nation remains more obſcure and uncertain than it would have been if theſe prudent regulations of their monarchs had taken effect. A mode of judicial determination was eſtabliſhed in the middle ages, which affords the cleareſt proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary cuſtoms, were often at a loſs how to find out the facts and principles, according to which they were bound to decide. They were obliged, in dubious caſes, to call a certain number of old men, and to lay the caſe before them, that they might inform them what was the practice or cuſtom with regard to the point. This was called *Enqueſte par tourbe*. Du Cange, voc. *Turba*. The effects of the revival of the Roman juriſprudence have been explained by M. de Monteſquieu, liv. xxviii. c. 42. and by Mr. Hume, Hiſt. of England, vol. ii. p. 441. I have adopted many of their ideas. Who can pretend to review any ſubject which ſuch writers have conſidered, without receiving from them light and information: At the ſame time I am convinced, that the knowledge of the Roman law was not ſo entirely loſt in Europe during the middle ages, as is commonly believed. My ſubject does not require me to examine this point. Many ſtriking facts with regard to it are collected by Donato Antonio d'Aſti Dall' Uſo e autorita della regione civilè nelle provincie dell' Imperio Occidentale. Nap. 1751, 2 vol. 8vo.

That the civil law is intimately connected with the municipal juriſprudence in ſeveral countries of Europe, is a fact ſo well known, that it needs no illuſtration. Even in England, where the common law is ſuppoſed to form a ſyſtem perfectly diſtinct from the Roman code, and although ſuch as apply in that country to the ſtudy of the common law, boaſt of this diſtinction with ſome degree of affectation, it is evident that many of the ideas and maxims of the civil law are incorporated into the Engliſh juriſprudence. This is well illuſtrated by the ingenious and learn-

ed author of Obſervations on the Statutes, chiefly the more ancient, 3d edit. p. 76, &c.

## NOTE XXVI. Sect. I. p. 66. [CC].

The whole hiſtory of the middle ages makes it evident, that war was the ſole profeſſion of gentlemen, and almoſt the only object attended to in their education. Even after ſome change in manners began to take place, and the civil arts of life had acquired ſome reputation, the ancient ideas with reſpect to the accompliſhments neceſſary for a perſon of noble birth, continued long in force. In the Memoires de Fleuranges, p. 9, &c we have an account of the youthful exerciſes and occupations of Francis I. and they were altogether martial and athletic. That father of letters owed his reliſh for them, not to education, but to his own good ſenſe and good taſte. The manners of the ſuperior order of eccleſiaſtics during the middle ages furniſh the ſtrongeſt proof that, in ſome inſtances, the diſtinction of profeſſions was not completely aſcertained in Europe. The functions and character of the clergy are obviouſly very different from thoſe of laymen; and among the inferior orders of churchmen, this conſtituted a diſtinct character ſeparate from that of other citizens. But the dignified eccleſiaſtics, who were frequently of noble birth, were above ſuch a diſtinction; they retained the idea of what belonged to them as gentlemen, and in ſpite of the decrees of popes, or the canons of councils, they bore arms, led their vaſſals to the field, and fought at their head in battle. Among them the prieſthood was ſcarcely a ſeparate profeſſion; the military accompliſhments which they thought eſſential to them as gentlemen, were cultivated; the theological ſcience, and pacific virtues ſuitable to their ſpiritual function, were neglected and deſpiſed.

As ſoon as the ſcience of law became a laborious ſtudy, and the practice of it a ſeparate profeſſion, ſuch perſons as roſe to eminence in it obtained honours which had formerly been appropriated to ſoldiers. Knighthood was the moſt illuſtrious mark of diſtinction during ſeveral ages, and conferred privileges to which rank or birth alone were not entitled. To this high dignity perſons eminent for their knowledge of law were advanced, and were thereby placed on a level with thoſe whom their military talents had rendered conſpicuous. *Miles Juſtitiæ*, *Miles Literatus*, became common titles. Matthew Paris mentions ſuch knights as early as A. D. 1251. If a judge attained a certain rank in the courts of juſtice, that alone gave him a right to the honour of knighthood. Paſquier Recherches, liv. xi. c. 16. p. 130. Diſſertations hiſtoriques ſur la Chevalerie, par Honore de Sainte Marie, p. 164, &c. A profeſſion that led to offices, which ennobled the perſons who held them, grew into credit, and the people of Europe became accuſtomed to ſee men riſe to eminence by civil as well as military talents.

## NOTE XXVII. Sect. I. p. 69. [DD].

The chief intention of these notes was to bring at once under the view of my readers, such facts and circumstances as tend to illustrate or confirm what is contained in that part of the history to which they refer. When these lay scattered in many different authors, and were taken from books not generally known, or which many of my readers might find it disagreeable to consult, I thought it would be of advantage to collect them together. But when every thing necessary for the proof or illustration of my narrative or reasoning may be found in any book which is generally known, or deserves to be so, I shall satisfy myself with referring to it. This is the case with respect to Chivalry. Almost every fact which I have mentioned in the text, together with many other curious and instructive particulars concerning this singular institution, may be found in Memoires sur l'ancienne Chevalerie considerée comme une Etablissement politique & militaire, par M. de la Curne de St. Palaye.

## Note XXVIII. Sect. I. p. 73. [EE].

The subject of my enquiries does not call me to write a history of the progress of science. The facts and observations which I have produced, are sufficient to illustrate the effects of its progress upon manners and the state of society. While science was altogether extinct in the western parts of Europe, it was cultivated in Constantinople and other parts of the Grecian Empire. But the subtile genius of the Greeks turned almost entirely to theological disputation. The Latins borrowed that spirit from them, and many of the controversies which still occupy and divide theologians, took their rise among the Greeks, from whom the other Europeans derived a considerable part of their knowledge. See the testimony of Æneas Sylvius ap. Conringium de antiq. academicis, p. 43. Histoire literaire de France, tom. vii. p. 113, &c. tom. ix. p. 151, &c. Soon after the empire of the Caliphs was established in the East, some illustrious princes arose among them, who encouraged science. But when the Arabians turned their attention to the literature cultivated by the ancient Greeks and Romans, the chaste and correct taste of their works of genius appeared frigid and unanimated to a people of a more warm imagination. Tho' they could not admire the poets and historians of Greece or of Rome, they were sensible of the merit of their philosophers. The operations of the intellect are more fixed and uniform than those of the fancy or taste. Truth makes an impression nearly the same in every place; the ideas of what is beautiful, elegant, or sublime, vary in different climates. The Arabians, though they neglected Homer, translated the most eminent of the Greek philosophers into their own language; and, guided by their precepts and discoveries, applied themselves with great ardour to the study of geometry, astronomy, medicine, dialectics, and metaphysics. In the three former, they made considerable and useful improvements, which have contributed not a little to advance those sciences to that high degree of perfection which they have attained. In the

two latter, they chose Aristotle for their guide, and refining on the subtle and distinguishing spirit which characterises his philosophy, they rendered it in a great degree frivolous or unintelligible. The schools established in the East for teaching and cultivating these sciences were in high reputation. They communicated their love of science to their countrymen, who conquered Africa and Spain; and the schools instituted there were little inferior in fame to those in the East. Many of the persons who distinguished themselves by their proficiency in science during the twelfth and thirteenth centuries, were educated among the Arabians. Bruckerus collects many instances of this, Histor. Philos. v. iii. p. 681, &c. Almost all the men eminent for science, during several centuries, if they did not resort in person to the schools of Africa and Spain, were instructed in the philosophy of the Arabians. The first knowledge of the Aristotelian philosophy in the middle ages was acquired by translations of Aristotle's works out of the Arabic. The Arabian commentators were deemed the most skilful and authentic guides in the study of his system. Conring. Antiq. Acad. Diss. iii p. 95, &c. Supplem. p. 241, &c. Murat Antiq. Ital. vol. iii. p. 932, &c. From them the schoolmen derived the genius and principles of their philosophy, which contributed so much to retard the progress of true science.

The establishment of colleges or universities is a remarkable æra in literary history. The schools in cathedrals and monasteries confined themselves chiefly to the teaching of grammar. There were only one or two masters employed in that office. But in colleges, professors were appointed to teach all the different parts of science. The course or order of education was fixed. The time that ought to be allotted to the study of each science was ascertained. A regular form of trying the proficiency of students was prescribed; and academical titles and honours were conferred on such as acquitted themselves with approbation. A good account of the origin and nature of these is given by Seb. Bacmeisterus Antiquitates Rostochienses, sive, Historia Urbis & Academiæ Rostoch. ap. Monumenta inedita Rer. Germ. per E. J. de Westphalen, vol. iii. p. 781. Lipsi. 1743. The first obscure mention of these academical degrees in the university of Paris (from which the other universities in Europe have borrowed most of their customs and institutions) occurs, A. D. 1215. Crevier. Hist. de l'Univ. de Paris, tom. i. p. 296, &c. They were completely established, A. D. 1231. Ib. 248. It is unnecessary to enumerate the several privileges to which bachelors, masters, and doctors were entitled. One circumstance is sufficient to demonstrate the high degree of estimation in which they were held. Doctors in the different faculties contended with knights for precedence, and the dispute was terminated in many instances by advancing the former to the dignity of knighthood, the high prerogatives of which I have mentioned. It was even asserted, that a doctor had a right to that title without creation. Bartolus taught—doctorem actualiter regentem in jure civili per decennium effici militem ipso facto. Honorè de St. Marie Dissert. p. 165. This was called Che-

valerie de Lectures, and the perſons advanced to that dignity, Miſites Clerici. Theſe new eſtabliſhments for education, together with the extraordinary honours conferred on learned men, greatly increaſed the number of ſcholars. In the year 1262, there were ten thouſand ſtudents in the univerſity of Bologna; and it appears from the hiſtory of that univerſity, that law was the only ſcience taught in it at that time. In the year 1340, there were thirty thouſand in the univerſity of Oxford. Speed's Chron. ap. Anderſon's Chronol. Deduction of Commerce, vol. i. p. 172. In the ſame century, ten thouſand perſons voted in a queſtion agitated in the univerſity of Paris; and as graduates alone were admitted to that privilege, the number of ſtudents muſt have been very great. Velly Hiſt. de France, tom. xi. p. 147. There were indeed few univerſities in Europe at that time; but ſuch a number of ſtudents may nevertheleſs be produced as a proof of the extraordinary ardour with which men applied to the ſtudy of ſcience in thoſe ages; it ſhows likewiſe that they already began to conſider other profeſſions beſide that of a ſoldier as honourable and uſeful.

## Note XXIX. Sect. I. p. 84. [FF].

The great variety of ſubjects which I have endeavoured to illuſtrate, and the extent of this upon which I now enter, will juſtify my adopting the words of M. de Monteſquieu, when he begins to treat of commerce. "The ſubject which follows would re-"quire to be diſcuſſed more at large; but the nature of this work "does not permit it. I wiſh to glide on a tranquil ſtream; but I "am hurried along by a torrent."

Many proofs occur in hiſtory of the little intercourſe between nations during the middle ages. Towards the cloſe of the tenth century, Count Bouchard intending to found a monaſtery at St. Maur des Foſſes near Paris, applied to an Abbot of Clugny in Burgundy famous for his ſanctity, intreating him to conduct the monks thither. The language in which he addreſſed that holy man is ſingular: he tells him that he had undertaken the labour of ſuch a great journey; that he was fatigued with the length of it, therefore hoped to obtain his requeſt, and that his journey into ſuch a diſtant country ſhould not be in vain. The anſwer of the abbot is ſtill more extraordinary: he refuſed to comply with his deſire, as it would be extremely fatiguing to go along with him into a ſtrange and unknown region. Vita Burchardi venerabilis comitis ap Bouquet Rec. des Hiſt. vol. x. p. 351. Even ſo late as the beginning of the twelfth century, the monks of Ferrieres in the dioceſe of Sens did not know that there was ſuch a city as Tournay in Flanders; and the monks of St. Martin of Tournay were equally unacquainted with the ſituation of Ferrieres. A tranſaction in which they were both concerned made it neceſſary for them to have ſome intercourſe. The mutual intereſt of both monaſteries prompted each to find out the ſituation of the other. After a long ſearch, which is particularly deſcribed, the diſcovery was made by accident. Herimannus Abbas de Reſtauratione St. Martini Tornacenſis ap. Dacher. Spicel. vol. xii. p. 400. The igno-

rance of the middle ages with reſpect to the ſituation and geography of remote countries was ſtill more remarkable. The moſt ancient geographical chart which now remains as a monument of the ſtate of that ſcience in Europe during the middle ages, is found in a manuſcript of the Chronique de St. Denys. There the three parts of the earth then known are ſo repreſented, that Jeruſalem is placed in the middle of the globe, and Alexandria appears to be as near to it as Nazareth. Mem. de l'Acad. des Belles Lettres, tom xvi. p. 185. There ſeems to have been no inns or houſes of entertainment for the reception of travellers during the middle ages Murat. Antiq. Ital. vol. iii. p. 581, &c. This is a proof of the little intercourſe which took place between different nations. Among people whoſe manners are ſimple, and who are ſeldom viſited by ſtrangers, hoſpitality is a virtue of the firſt rank. This duty of hoſpitality was ſo neceſſary in that ſtate of ſociety which took place during the middle ages, that it was not conſidered as one of thoſe virtues which men may practiſe or not, according to the temper of their minds and the generoſity of their hearts. Hoſpitality was enforced by ſtatutes, and ſuch as neglected this duty were liable to puniſhment. Quicunque hoſpiti venienti lectum, out focum negaverit, trium ſolidorum inlatione mulctetur. Leg. Burgund. tit. xxxviii. § 1. Si quis homini aliquo pergenti in itinere manſionem vetaverit ſexaginta ſolidos componat in publico. Capitul. lib. vi. § 82. This increaſe of the penalty, at a period ſo long after that in which the laws of the Burgundians were publiſhed, and when the ſtate of ſociety was much improved, is very remarkable. Other laws of the ſame purport are collected by Jo. Fred. Polac. Syſtema Juriſprud. Germanicæ, Lipſ. 1733, p. 75. The laws of the Slavi were more rigorous than any that he mentions; they ordained, "that the moveables of an inhoſpitable perſon ſhould be confiſcated, and his houſe burnt. They were even ſo ſolicitous for the entertainment of ſtrangers that they permitted the landlord to ſteal for the ſupport of his gueſt." Quod noctu furatus fueris, cras appone, hoſpitibus. Rerum Mecleburgicar lib. viii. a Mat. Jo. Beehr. Lipſ. 1751, p. 50. In conſequence of theſe laws, or of the ſtate of ſociety which made it proper to enact them, hoſpitality abounded while the intercourſe among men was inconſiderable, and ſecured the ſtranger a kind reception under every roof where he choſe to take ſhelter. This, too, proves clearly, that the intercourſe among men was rare, for as ſoon as this became frequent, what was a pleaſure became a burden, and the entertaining of travellers was converted into a branch of commerce.

But the laws of the middle ages afford a proof ſtill more convincing of the ſmall intercourſe between different nations. The genius of the feudal ſyſtem, as well as the ſpirit of jealouſy which always accompanies ignorance, concurred in diſcouraging ſtrangers from ſettling in any new country. If a perſon removed from one province in a kingdom to another, he was bound within a year and day to acknowledge himſelf the vaſſal of the baron in whoſe eſtate he ſettled; if he neglected to do ſo, he became liable

to a penalty; and, if at his death he neglected to leave a certain legacy to the baron within whoſe territory he had reſided, all his goods were confiſcated. The hardſhips impoſed on foreigners ſettling in a country, were ſtill more intolerable. In more early times, the ſuperior lord of any territory in which a foreigner ſettled, might ſeize his perſon, and reduce him to ſervitude. Very ſtriking inſtances of this occur in the hiſtory of the middle ages. The cruel depredations of the Normans in the ninth century, obliged many inhabitants of the maritime provinces of France to fly into the interior parts of the kingdom. But inſtead of being received with that humanity to which their wretched condition entitled them, they were reduced to a ſtate of ſervitude. Both the civil and eccleſiaſtical powers found it neceſſary to interpoſe in order to put a ſtop to this barbarous practice. Potgieſſer. de Statu Servor. lib. i. c. 1. § 16. In other countries, the laws permitted the inhabitants of the maritime provinces to reduce ſuch as were ſhipwrecked on their coaſt to ſervitude. Ibid. § 17 .This barbarous cuſtom prevailed in many countries of Europe. The practice of ſeizing the goods of perſons who had been ſhipwrecked, and of confiſcating them as the property of the lord on whoſe manor they were thrown, ſeems to have been univerſal. De Weſtphalen Monum. inedita Rer. Germ. vol. iv. p. 907, &c. et Du Cange, voc. *Laganum*, Beehr. Rer. Mecleb. lib. p. 512. Among the ancient Welſh, three ſorts of perſons, a madman, a ſtranger, and a leper, might be killed with impunity. Leges Hoel Dda, quoted in Obſervat. on the Statutes chiefly the more ancient, p. 22. M. de Lauriere produces ſeveral ancient deeds, which prove, that in different provinces of France, ſtrangers became the ſlaves of the lord on whoſe lands they ſettled. Gloſſaire du Droit François, art. *Aubaine*, p. 92. Beaumanoir ſays, "that there are ſeveral places in France, in which, if a ſtranger fixes his reſidence for a year and day, he becomes the ſlave of the lord of the manor." Couſt. de Beav. ch. 45. p. 254. As a practice ſo contrary to humanity could not ſubſiſt long, the ſuperior lords found it neceſſary to reſt ſatisfied, inſtead of enſlaving aliens, with levying certain annual taxes upon them, or impoſing upon them ſome extraordinary duties or ſervices. But when any ſtranger died, he could not convey his effects by will; and all his real, as well as perſonal eſtate, fell to the king, or to the lord of the barony, to the excluſion of his natural heirs. This is termed in France *Droit D'Aubaine*. Pref. de Laurier. Ordon. tom. i. p. 15. Bruſſel. tom. ii. p. 944. Du Cange, voc. *Albani*. Paſquier Recherches, p. 367. This practice of confiſcating the effects of ſtrangers upon their death was very ancient. It is mentioned, though very obſcurely, in a law of Charlemagne, A. D. 813. Capitul. Baluz. p. 507. § 5. Not only perſons who were born in a foreign country were ſubject to the Droit D'Aubaine, but in ſome countries ſuch as removed from one diocele to another, or from the lands of one baron to another. Bruſſel. vol. ii. p. 947, 949. It is hardly poſſible to conceive any law more unfavourable to the intercourſe between nations. Something ſimilar to it, however, may be found

in the ancient laws of every kingdom in Europe. With reſpect to Italy, ſee Murat. Ant. vol. ii. p. 14. As nations advanced in improvement, this practice was gradually aboliſhed. It is no ſmall diſgrace to the French juriſprudence, that this barbarous inhoſpitable cuſtom ſhould have ſo long remained among a people ſo highly civilized.

The confuſion and outrage which abounded under a feeble form of government, incapable of framing or executing ſalutary laws, rendered the communication between the different provinces of the ſame kingdom extremely dangerous. It appears from a letter of Lupus, abbot of Ferrieres, in the ninth century, that the highways were ſo much infeſted by banditti, that it was neceſſary for travellers to form themſelves into companies or caravans, that they might be ſafe from the aſſaults of robbers. Bouquet Recueil des Hiſt. vol. vii. p. 515. The numerous regulations publiſhed by Charles the Bald in the ſame century, diſcovered the frequency of theſe diſorders; and ſuch acts of violence were become ſo common, that by many they were hardly conſidered as criminal. For this reaſon the inferior judges, called centenarii, were required to take an oath, that they would neither commit any robbery themſelves nor protect ſuch as were guilty of that crime. Capitul. edit. Baluz. vol. ii. p. 63, 68. The hiſtorians of the ninth and tenth centuries gave pathetic deſcriptions of theſe diſorders. Some remarkable paſſages to this purpoſe are collected by Mat. Jo. Beehr. Rer. Mecleb. lib. viii. p. 603. They became ſo frequent and audacious, that the authority of the civil magiſtrate was unable to repreſs them. The eccleſiaſtical juriſdiction was called in to aid it. Councils were held with great ſolemnity, the bodies of the ſaints were brought thither, and, in preſence of their ſacred reliques, anathemas were denounced againſt robbers, and other violators of the public peace. Bouquet Recueil des Hiſt. tom. x. p. 360, 431, 536. One of theſe forms of excommunication, iſſued A. D. 988, is ſtill preſerved, and is ſo ſingular, and compoſed with eloquence of ſuch a peculiar kind, that it will not perhaps be deemed unworthy of a place here. After the uſual introduction, and mentioning the outrage which gave occaſion to the anathema, it runs thus: "Obtenebreſcant oculi veſtri, qui concupiverunt; areſcant manus, quæ rapuerunt, debilitentur omnia membra, quæ adjuverunt. Semper laboretis, nec requiem inveniatis, fructuque veſtri laboris privemini. Formidetis, et paveatis, a facie perſequentis, et non perſequentis hoſtis, ut tabeſcendo deficiatis. Sit portio veſtra cum Juda traditore Domini, in terra mortis et tenebrarum; donec corda veſtra ad ſatisfactionem plenam convertantur.—Ne ceſſant a vobis hæ maledictiones, ſcelerum veſtrorum perſecutrices, quamdiu permanebitis in peccato pervaſionis. Amen, Fiat, Fiat." Bouquet ib. p. 517.

## Note XXX. Sect. I. p. 89. [GG.]

With reſpect to the progreſs of commerce which I have deſcribed, p. 73, &c it may be obſerved, that the Italian ſtates carried on ſome commerce with the cities of the Greek empire, as

early as the age of Charlemagne, and imported into their own country the rich commodities of the eaſt. Murat. Antiq. Ital. vol. ii. p. 882. In the tenth century, the Venetians had opened a trade with Alexandria in Egypt. Ibid. The inhabitants of Amalphi and Piſa had likewiſe extended their trade to the ſame ports. Murat. ib. p. 884, 885. The effects of the Cruſades in increaſing the wealth and commerce of the Italian ſtates, and particularly that which they carried on with the Eaſt, I have explained, page 32d of this volume. They not only imported the Indian commodities from the Eaſt, but eſtabliſhed manufactures of curious fabric in their own country. Several of theſe are enumerated by Muratori in his Diſſertations concerning the *arts* and the *weaving* of the middle ages. Antiq. Ital. vol. ii. p. 349, 399. They made great progreſs, particularly in the manufacture of ſilk, which had long been peculiar to the eaſtern provinces of Aſia. Silk ſtuffs were of ſuch high price in ancient Rome, that only a few perſons of the firſt rank were able to purchaſe them. Under Aurelian, A. D. 270, a pound of ſilk was equal in value to a pound of gold. Abſit ut auro fila penſentur. Libra enim auri tunc libra ſerici fuit. Vopiſcus in Aureliano. Juſtinian, in the ſixth century, introduced the art of rearing ſilk worms into Greece, which rendered the commodity ſomewhat more plentiful, though ſtill it was of ſuch great value as to remain an article of luxury or magnificence, reſerved only for perſons of the firſt order, or for public ſolemnities. Roger I. king of Sicily, about the year 1130, carried off a number of artificers in the ſilk trade from Athens, and ſettling them in Palermo, introduced the culture of ſilk into his kingdom, from which it was communicated to other parts of Italy. Gianon. Hiſt. of Naples, b. xi. c. 7. This ſeems to have rendered ſilk ſo common, that, about the middle of the fourteenth century, a thouſand citizens of Genoa appeared in one proceſſion clad in ſilk robes. Sugar is likewiſe a production of the Eaſt. Some plants of the ſugar cane were brought from Aſia; and the firſt attempt to cultivate them in Sicily was made about the middle of the twelfth century. From thence they were tranſplanted into the ſouthern provinces of Spain. From Spain they were carried to the Canary and Madeira iſles, and at length into the new world. Ludovico Guicciardini, in enumerating the goods imported into Antwerp about the year 1500, mentions the ſugar which they received from Spain and Portugal as a conſiderable article. He deſcribes that ſugar as the product of the Madeira and Canary iſlands. Deſcrit. de Paeſi Baſſi, p. 180, 181. The ſugar cane was introduced into the Weſt Indies before that time, but the cultivation of it was not ſo improved or extenſive as to furniſh an article of much conſequence in commerce. In the middle ages, though ſugar was not raiſed in ſuch quantities, or employed for ſo many purpoſes, as to become one of the common neceſſaries of life, it appears to have been a conſiderable article in the commerce of the Italian ſtates.

Theſe various commodities with which the Italians furniſhed

the other nations of Europe, procured them a favourable reception in every kingdom. They were eſtabliſhed in France in the thirteenth century with moſt extenſive immunities. They not only obtained every indulgence favourable to their commerce, but perſonal rights and privileges were granted to them, which the natives of the kingdom did not enjoy. Ordon. tom. iv. p. 668. By a ſpecial proviſo, they were exempted from the Droit D'Aubaine. Ibid. p. 670. As the Lombards (a name frequently given to all Italian merchants in many parts of Europe) engroſſed the trade of every kingdom in which they ſettled, they became maſters of its caſh. Money of courſe was in their hands not only a ſign of the value of other commodities, but became an object of commerce itſelf. They dealt largely as bankers. In an ordonnance, A. D. 1295, we find them ſtiled *mercatores* and *campſores*. They carried on this as well as other branches of their commerce with ſomewhat of that rapacious ſpirit which is natural to monopolizers who are not reſtrained by the competition of rival traders. An abſurd opinion, which prevailed in the middle ages, was, however in ſome meaſure, the cauſe of their exorbitant demands, and may be pleaded in apology for them. Trade cannot be carried on with advantage, unleſs the perſons who lend a ſum of money are allowed a certain premium for the uſe of it, as a compenſation for the riſk which they run in permitting another to traffic with their ſtock. This premium is fixed by law in all commercial countries, and is called the legal intereſt of money. But the Fathers of the church had prepoſterouſly applied the prohibitions of uſury in ſcripture to the payment of legal intereſt, and condemned it as a ſin. The ſchoolmen, miſled by Ariſtotle, whoſe ſentiments they followed implicitly, and without examination, adopted the ſame error, and enforced it. Blackſtone's Commentaries on the Laws of England, vol. ii. p. 455. Thus the Lombards found themſelves engaged in a traffic which was every where deemed criminal and odious. They were liable to puniſhment if detected. They were not ſatisfied, therefore, with that moderate premium, which they might have claimed if their trade had been open and authoriſed by law. They exacted a ſum proportional to the danger and infamy of a diſcovery. Accordingly, we find that it was uſual for them to demand twenty per cent. for the uſe of money in the thirteenth century. Murat. Antiq. Ital. vol. i. p. 893. About the beginning of that century, the counteſs of Flanders was obliged to borrow money in order to pay her huſband's ranſom. She procured the ſum requiſite, either from Italian merchants or from Jews. The loweſt intereſt which ſhe paid to them was above twenty per cent. and ſome of them exacted near thirty. Martene and Durand. Theſaur. Anecdotorum, vol. i. p. 886. In the fourteenth century, A. D. 1311, Philip IV. fixed the intereſt which might be legally exacted in the fairs Champagne at twenty per cent. Ordonan. tom. i. p. 484. The intereſt of money in Aragon was ſomewhat lower. James I. A. D. 1242, fixed it by law at eighteen per cent. Petr. de Marca. *Marca* ſive Limes Hiſpan. app. 1433. As late as the

year 1490, it appears that the intereſt of money in Placentia was at the rate of forty per cent. This is the more extraordinary, becauſe at that time the commerce of the Italian ſtates was become conſiderable. Memoire Storiche de Piacenza, tom. viii. p. 104. Piac. 1760. It appears from Lud. Guicciardini, that Charles V. had fixed the rate of intereſt in his dominions in the Low Countries at twelve per cent. and at the time when he wrote, about the year 1560, it was not uncommon to exact more than that ſum. He complains of this as exorbitant, and points out its bad effects both on agriculture and commerce. Deſcritt. di Paeſi Baſſi, p. 172. The high intereſt of money is alone a proof that the profits on commerce were exorbitant; and that it was not carried on to great extent.—The Lombards were likewiſe eſtabliſhed in England in the thirteenth century, and a conſiderable ſtreet in the city of London ſtill bears their name. They enjoyed great privileges, and carried on an extenſive commerce, particularly as bankers. See Anderſon's Chronol. Deduction, vol. i. p. 137, 160, 204, 231. where the ſtatutes or other authorities which confirm this are quoted. But the chief mart for Italian commodities was at Bruges. Navigation was then ſo imperfect that to ſail from any port in the Baltic, and to return again, was a voyage too great to be performed in one ſummer. For that reaſon, a magazine or ſtorehouſe half-way between the commercial cities in the North, and thoſe in Italy, became neceſſary. Bruges was pitched upon as the moſt convenient ſtation. That choice introduced vaſt wealth into the Low Countries. Bruges was at once the ſtaple for Engliſh wool; for the woollen and linen manufactures of the Netherlands; for the naval ſtores and other bulky commodities of the North; and for the Indian commodities, as well as domeſtic productions imported by the Italian States. The extent of its commerce in Indian goods with Venice alone, appears from one fact. In the year 1318, five Venetian galeaſſes laden with Indian commodities arrived at Bruges, in order to diſpoſe of their cargoes at the fair. Theſe galeaſſes were veſſels of very conſiderable burden. L. Guic. Deſcritt. di Paeſi Baſſi, p. 174. Bruges was the greateſt emporium in all Europe. Many proofs of this occur in the hiſtorians and records of the thirteenth and fourteenth centuries. But, inſtead of multiplying quotations, I ſhall refer my readers to Anderſon, vol. i. p. 12, 137, 213, 246, &c. The nature of this work prevents me from entering into any more minute detail, but there are ſome detached facts, which give an high idea of the wealth both of the Flemiſh and Italian commercial ſtates. The Duke of Brabant contracted his daughter to the Black Prince, ſon of Edward III. of England, A. D. 1339, and gave her a portion which we may reckon to be of equal value with three hundred thouſand pounds of our preſent money. Rymer's Fœdera, vol. v. p. 113. John Galeazzo Viſconti Duke of Milan concluded a treaty of marriage between his daughter and Lionel Duke of Clarence, Edward's third ſon, A. D. 1367, and granted her a portion equal to two hundred thouſand pounds of our preſent money. Rymer's Fœder. vol. vi. p. 547. Theſe exorbitant ſums ſo far exceeding what was

then granted by the moſt powerful monarchs, and which appear extraordinary even in the preſent age when the wealth of Europe is ſo much increaſed, muſt have ariſen from the riches which flowed into thoſe countries from their extenſive and lucrative commerce. The firſt ſource of wealth to the towns ſituated on the Baltic ſea ſeems to have been the herring fiſhery; the ſhoals of herrings frequenting at that time the coaſts of Sweden and Denmark, in the ſame manner as they now reſort to the Britiſh coaſts. The effects of this fiſhery are thus deſcribed by an author of the thirteenth century. The Danes, ſays he, who were formerly clad in the poor garb of ſailors, are now clothed in ſcarlet, purple, and fine linen. For they abound with wealth flowing from their annual fiſhery on the coaſt of Schonen; ſo that all nations reſort to them, bringing their gold, ſilver, and precious commodities, that they may purchaſe herrings, which the divine bounty beſtows upon them. Arnoldus Lubecenſis ap. Conring. de Urbib. German. §87.

The Hanſeatic league is the moſt powerful commercial confederacy known in hiſtory. Its origin towards the cloſe of the twelfth century, and the objects of its union, are deſcribed by Knipſchildt Tractatus Hiſtorico Politico Juridicus de Juribus Civitat. Imper. lib. i. cap. 4. Anderſon has mentioned the chief facts with reſpect to their commercial progreſs, the extent of the privileges which they obtained in different countries, their ſucceſsful wars with ſeveral monarchs, as well as the ſpirit and zeal with which they contended for thoſe liberties and rights without which it is impoſſible to carry on commerce to advantage. The vigorous efforts of a ſociety of merchants attentive only to commercial objects, could not fail of diffuſing new and more liberal ideas concerning juſtice and order in every country of Europe where they ſettled.

In England, the progreſs of commerce was extremely ſlow; and the cauſes of this are obvious. During the Saxon heptarchy, England, ſplit into many petty kingdoms, which were perpetually at variance with each other; expoſed to the fierce incurſions of the Danes, and other northern pirates, and ſunk in barbarity and ignorance, was in no condition to cultivate commerce, or to purſue any ſyſtem of uſeful and ſalutary policy. When a better proſpect began to open by the union of the kingdom under one monarch, the Norman conqueſt took place. This occaſioned ſuch a violent ſhock, as well as ſuch a ſudden and total revolution of property, that the nation did not recover from it during ſeveral reigns. By the time that the conſtitution began to acquire ſome ſtability, and the Engliſh had ſo incorporated with their conquerors as to become one people, the nation engaged with no leſs ardour than imprudence in ſupport of the pretenſions of their ſovereigns to the crown of France, and long waſted its vigour and genius in its wild efforts to conquer that kingdom. When by its ill ſucceſs, and repeated diſappointments, a period was at laſt put to this fatal phrenzy, and the nation beginning to enjoy ſome repoſe, had leiſure to breathe and to gather new ſtrength, the deſtructive wars between the houſes of York and Lancaſter broke out, and involv-

ed the kingdom in the worſt of all calamities. Thus, beſides the common obſtructions of commerce occaſioned by the nature of the feudal government, and the ſtate of manners during the middle ages, its progreſs in England was retarded by peculiar cauſes. Such a ſucceſſion of events adverſe to the commercial ſpirit was ſufficient to have checked its growth, although every other circumſtance had favoured it. The Engliſh were accordingly one of the laſt nations in Europe who availed themſelves of thoſe commercial advantages which were natural or peculiar to their country. Before the reign of Edward III. all the wool of England, except a ſmall quantity wrought into coarſe cloths for home conſumption, was ſold to the Flemings or Lombards, and manufactured by them. Though Edward, A. D. 1326, began to allure ſome of the Flemiſh weavers to ſettle in England, it was long before the Engliſh were capable of fabricating cloth for foreign markets, and the export of unwrought wool ſtill continued to be the chief article of their commerce. Anderſon paſſim. All foreign commodities were brought into England by the Lombards or Hanſeatic merchants. The Engliſh ports were frequented by ſhips both from the north and ſouth of Europe, and they tamely allowed foreigners to reap all the profits ariſing from the ſupply of their wants. The firſt commercial treaty of England on record, is that with Haquin king of Norway, A. D. 1217. Anderſ. vol i. p. 108. But the Engliſh did not venture to trade in their own ſhips to the Baltic until the beginning of the fourteenth century. Ib. 151. It was after the middle of the fifteenth, before they ſent any ſhip into the Mediterranean. Ib. p. 177. Nor was it long before this period that their veſſels began to viſit the ports of Spain or Portugal. But though I have pointed out the ſlow progreſs of the Engliſh commerce as a fact little attended to, and yet meriting conſideration, the concourſe of foreigners to the ports of England, together with the communication among all the different countries in Europe, which went on increaſing from the beginning of the twelfth century, is ſufficient to juſtify all the obſervations and reaſonings in the text concerning the influence of commerce on the ſtate of manners and of ſociety.

## NOTE XXXI. Sect. III. p. 137. [HH].

I have not been able to diſcover the preciſe manner in which the juſtiza was appointed. Among the claims of the *junta* or *union* formed againſt James I. A. D. 1264, this was one; that the king ſhould not nominate any perſon to be juſtiza, without the conſent or approbation of the ricos-hombres or nobles. Zurita Anales de Aragon, vol. i. p. 180. But the king in his anſwer to their remonſtrance aſſerts, "that it was eſtabliſhed by immemorial practice, and was conformable to the laws of the kingdom, that the king, in virtue of his royal prerogative, ſhould name the juſtiza." Zurita, ibid. 181. Blanca, 656. From another paſſage in Zurita, it appears, that while the Aragoneſe enjoyed the privilege of *the union*, i. e. the power of confederating againſt their ſovereign as often as they conceived that he had violated any of their rights

and immunities, the juſtiza was not only nominated by the king, but held his office during the king's pleaſure. Nor was this practice attended with any bad effects, as the privilege of the union was a ſufficient and effectual check to any abuſe of the royal prerogative. But when the privilege of the union was aboliſhed as dangerous to the order and peace of ſociety, it was agreed that the juſtiza ſhould continue in office during life. Several kings, however, attempted to remove juſtizas who were obnoxious to them, and they ſometimes ſucceeded in the attempt. In order to guard againſt this encroachment, which would have deſtroyed the intention of the inſtitution, and have rendered the juſtiza the dependent and tool of the crown, inſtead of the guardian of the people, a law was enacted in the Cortes, A. D. 1442, ordaining that the juſtiza ſhould continue in office during life, and ſhould not be removed from it unleſs by the authority of the Cortes. Fueros & Obſervancias del Reyno de Arag. lib. i. p. 22. By former laws the perſon of the juſtiza had been declared ſacred, and he was reſponſible only to the Cortes. Ibid. p. 15, b. Zurita and Blanca, who both publiſhed their hiſtories while the juſtiza of Aragon retained the full exerciſe of his privileges and juriſdiction, have neglected to explain ſeveral circumſtances with regard to the office of that reſpectable magiſtrate, becauſe they addreſſed their works to their countrymen, who were well acquainted with every particular concerning the functions of a judge, to whom they looked up as to the guardian of their liberties. It is vain to conſult the later hiſtorians of Spain, about any point with reſpect to which the excellent hiſtorians whom I have named are ſilent. The ancient conſtitution of their country was overturned, and deſpotiſm eſtabliſhed on the ruin of its liberties, when the writers of this and the preceding century compoſed their hiſtories, and on that account they had little curioſity to know the nature of thoſe inſtitutions to which their anceſtors owed the enjoyment of freedom, or they were afraid to deſcribe them with much accuracy. The ſpirit with which Mariana, his continuator Miniana, and Ferreras, write their hiſtories, is very different from that of the two hiſtorians of Aragon, from whom I have taken my account of the conſtitution of that kingdom.

Two circumſtances concerning the juſtiza, beſides thoſe which I have mentioned in the text, are worthy of obſervation: 1. None of the ricos-hombres, or noblemen of the firſt order, could be appointed juſtiza. He was taken out of the ſecond claſs of cavalleros, who ſeem to have been nearly of the ſame condition or rank with gentlemen or commoners in Great Britain. Fueros & Obſervanc. del Reyno, &c. lib. i. p. 21, b. The reaſon was, By the laws of Aragon, the ricos-hombres were not ſubject to capital puniſhment; but as it was neceſſary for the ſecurity of liberty, that the juſtiza ſhould be accountable for the manner in which he executed the high truſt repoſed in him, it was a powerful reſtraint upon him to know that he was liable to be puniſhed capitally. Blanca, p. 657, 756. Zurita, tom. ii. 229. Fueros & Obſervanc. lib ix. p. 182, b. 183. It appears too, from many paſſages in Zurita, that the juſtiza was appointed to check the domineering and

oppreſſive ſpirit of the nobles, as well as to ſet bounds to the power of the monarch, and therefore he was choſen from an order of citizens equally intereſted in oppoſing both.

2. A magiſtrate poſſeſſed of ſuch extenſive powers as the juſtiza, might have exerciſed them in a manner pernicious to the ſtate, if he himſelf had been ſubject to no controul. A conſtitutional remedy was on that account provided againſt this danger. Seventeen perſons were choſen by lot in each meeting of the Cortes. Theſe formed a tribunal called the court of inquiſition into the office of juſtiza. This court met at three ſtated terms in each year. Every perſon had liberty of complaining to it of any iniquity or neglect of duty in the juſtiza, or in the inferior judges, who acted in his name. The juſtiza and his deputies were called to anſwer for their conduct. The members of the court paſſed ſentence by ballot. They might puniſh by degradation, confiſcation of goods, or even with death. The law which erected this court, and regulated the form of its procedure, was enacted, A. D. 1461. Zurita Anales, iv. 102. Blanca Comment. Rer. Aragon, 770. Previous to this period, inquiry was made into the conduct of the juſtiza, though not with the ſame formality. He was, from the firſt inſtitution of the office, ſubject to the review of the Cortes. The conſtant dread of ſuch an impartial and ſevere inquiry into his behaviour, was a powerful motive to the vigilant and faithful diſcharge of his duty. A remarkable inſtance of the authority of the juſtiza when oppoſed to that of the king occurs in the year 1386. By the conſtitution of Aragon, the eldeſt ſon or heir apparent of the crown poſſeſſed conſiderable power and juriſdiction in the kingdom. Fueros & Obſervan. del Reyno de Arag. lib. i. p. 16. Peter IV. inſtigated by a ſecond wife, attempted to deprive his ſon of this, and enjoined his ſubjects to yield him no obedience. The prince immediately applied to the juſtiza; "the ſafeguard and defence, ſays Zurita, againſt all violence and oppreſſion." The juſtiza granted him the *firmo de derecho*, the effect of which was, that upon his giving ſurety to appear in judgment, he could not be deprived of any immunity or privilege which he poſſeſſed, but in conſequence of a legal trial before the juſtiza, and of a ſentence pronounced by him. This was publiſhed throughout the kingdom, and notwithſtanding the proclamation in contradiction to this which had been iſſued by the king, the prince continued in the exerciſe of all his rights, and his authority was univerſally recognized. Zurita Anales de Aragon, tom. ii. 385.

## NOTE XXXII. Sect. III. p. 137. [II.]

I have been induced, by the concurring teſtimony of many reſpectable authors, to mention this as the conſtitutional form of the oath of allegiance, which the Aragoneſe took to their ſovereigns. I muſt acknowledge, however, that I have not found this ſingular oath in any Spaniſh author whom I have had an opportunity of conſulting. It is mentioned neither by Zurita, nor Blanca, nor Argenſola, nor Sayas, who were all hiſtoriographers appointed by the Cortes of Aragon to record the tranſactions of

the kingdom. All theſe writers poſſeſs a merit which is very rare among hiſtorians. They are extremely accurate in tracing the progreſs of the laws and conſtitution of their country. Their ſilence with reſpect to this, creates ſome ſuſpicion concerning the genuineneſs of the oath. But as it is mentioned by ſo many authors, who produce the ancient Spaniſh words, in which it is expreſſed, it is probable that they have taken it from ſome writer of credit, whoſe works have not fallen into my hands. The ſpirit of the oath is perfectly agreeable to the genius of the Aragoneſe conſtitution. Since the publication of the firſt edition, the learned M. Totze, profeſſor of hiſtory at Batzow in the Dutchy of Mecklenburgh, has been ſo good as to point out to me a Spaniſh author of great authority, who has publiſhed the words of this oath. It is Antonio Perez, a native of Aragon, ſecretary to Philip II. The words of the oath are, "Nos, que valemos tanto como vos, os hazemos nueſtro Rey y Segnor, con tal que nos guardeys nueſtros fueros, y libertades, y ſi No, No." Las Obras y Relaciones de Ant. Perez. 8vo. par Juan de la Planche 1631. p. 143.

The privilege of union, which I have mentioned in the preceding note, and alluded to it in the text, is indeed one of the moſt ſingular which could take place in a regular government, and the oath that I have quoted expreſſes nothing more than this conſtitutional privilege entitled the Aragoneſe to perform. If the king or his miniſters violated any of the laws or immunities of the Aragoneſe, and did not grant immediate redreſs in conſequence of their repreſentations and remonſtrances, the nobles of the firſt rank, or *Ricos-hombres de natura, & de meſnada*, the equeſtrian order, or the nobility of the ſecond claſs, called *Hidalgos* & *Infanciones*, together with the magiſtrates of cities, might, either in the Cortes, or in a voluntary aſſembly, join in union, and binding themſelves by mutual oaths and the exchange of hoſtages to be faithful to each other, they might require the king, in the name and by the authority of this body corporate, to grant them redreſs. If the king refuſed to comply with their requeſt, or took arms in order to oppoſe them, they might, in virtue of the privilege of union, inſtantly withdraw their allegiance from the king, refuſe to acknowledge him as their ſovereign, and proceed to elect another monarch; nor did they incur any guilt, or become liable to any proſecution on that account. Blanca Com. Rer. Arag. 661, 669. This union did not reſemble the confederacies in other feudal kingdoms. It was a conſtitutional aſſociation, in which legal privileges were veſted, which iſſued its mandates under a common ſeal, and proceeded in all its operations by regular and aſcertained forms. This dangerous right was not only claimed but exerciſed. In the year 1287, the Aragoneſe formed an union in oppoſition to Alfonſo III. and obliged that king not only to comply with their demands, but to ratify a privilege ſo fatal to the power of the crown. Zurita Anales, tom. i. p. 322. In the year 1347, an union was formed againſt Peter IV. with equal ſucceſs, and a new ratification of the privilege was extorted. Zu-

rita, tom. ii. p. 202. But ſoon after, the king having defeated the leaders of the union in battle, the privilege of union was finally abrogated in the Cortes, and all the laws or records which contained any confirmation of it were cancelled or deſtroyed. The king, in preſence of the Cortes, called for the act whereby he had ratified the union, and having wounded his hand with his poniard, he held it above the record, "that privilege, ſays "he, which has been ſo fatal to the kingdom, and ſo injurious "to royalty, ſhould be effaced with the blood of a king." Zurita, tom. ii. p. 229. The law aboliſhing the union is publiſhed. Fueros & Obſervanc. lib. ix. p. 178. From that period the juſtiza became the conſtitutional guardian of public liberty, and his power and juriſdiction occaſioned none of thoſe violent convulſions which the tumultuary privilege of the union was apt to produce. The conſtitution of Aragon, however, ſtill remained extremely free. One ſource of this liberty aroſe from the early admiſſion of the repreſentatives of the cities into the Cortes. It ſeems probable from Zurita, that burgeſſes were conſtituent members of the Cortes from its firſt inſtitution. He mentions a meeting of Cortes, A. D. 1133, in which the *procuradores de las ciudades y villas* were preſent. Tom. i. p. 51. This is the conſtitutional language in which their preſence is declared in the Cortes, after the journals of that court were regularly kept. It is probable, that a hiſtorian ſo accurate as Zurita would not have uſed theſe words, if he had not taken them from ſome authentic record. It was more than a century after this period before the repreſentatives of cities formed a conſtituent part in the ſupreme aſſemblies of the other European nations. The free ſpirit of the Aragoneſe government is conſpicuous in many particulars. The Cortes not only oppoſed the attempts of their kings to increaſe their revenue, or to extend their prerogative, but they claimed rights and exerciſed powers which will appear extraordinary even in a country accuſtomed to the enjoyment of liberty. In the year 1286, the Cortes claimed the privilege of naming the members of the king's council and the officers of his houſehold, and they ſeem to have obtained it for ſome time. Zurita, tom. i. p. 303, 307. It was the privilege of the Cortes to name the officers who commanded the troops raiſed by their authority. This ſeems to be evident from a paſſage in Zurita. When the Cortes, in the year 1503, raiſed a body of troops to be employed in Italy, it paſſed an act empowering the king to name the officers who ſhould command them, Zurita, tom. v. p. 274; which plainly implies that, without this warrant, it did not belong to him in virtue of his prerogative. In the Fueros & Obſervancias del Reyno de Aragon, two general declarations of the rights and privileges of the Aragoneſe are publiſhed; the one, in the reign of Pedro I. A. D. 1283; the other, in that of James II. A. D. 1325. They are of ſuch a length, that I cannot inſert them; but it is evident from theſe, that not only the privileges of the nobility, but the rights of the people, perſonal as well as political, were, at that period, more extenſive and better underſtood than in any kingdom

in Europe. Lib. i. p. 7, 9. The oath by which the king bound himſelf to obſerve thoſe rights and liberties of the people, was very ſolemn. Ibid. p. 14. b. & p. 15. The Cortes of Aragon diſcovered not only the jealouſy and vigilance which are peculiar to free ſtates, in guarding the eſſential parts of the conſtitution, but they were ſcrupulouſly attentive to obſerve the moſt minute forms and ceremonies to which they were accuſtomed. According to the eſtabliſhed laws and cuſtoms of Aragon, no foreigner had liberty to enter the hall in which the Cortes aſſembled. Ferdinand, in the year 1481, appointed his queen, Iſabella, regent of the kingdom, while he was abſent during the courſe of the campaign. The law required that a regent ſhould take the oath of fidelity in preſence of the Cortes; but as Iſabella was a foreigner, before ſhe could be admitted, the Cortes thought it neceſſary to paſs an act authorizing the ſerjeant-porter to open the door of the hall, and to allow her to enter; "ſo attentive were they (ſays Zurita) to "obſerve their laws and forms, even ſuch as may ſeem moſt mi-"nute." Tom. iv. p. 313.

The Aragoneſe were no leſs ſolicitous to ſecure the perſonal rights of individuals, than to maintain the freedom of the conſtitution; and the ſpirit of their ſtatutes with reſpect to both was equally liberal. Two facts relative to this matter merit obſervation. By an expreſs ſtatute in the year 1335, it was declared to be unlawful to put any native Aragoneſe to the torture. If he could not be convicted by the teſtimony of witneſſes, he was inſtantly abſolved. Zurita, tom. ii. p. 66. Zurita records the regulation with the ſatisfaction natural to an hiſtorian, when he contemplates the humanity of his countrymen. He compares the laws of Aragon to thoſe of Rome, as both exempted citizens and freemen from ſuch ignominious and cruel treatment, and had recourſe to it only in the trial of ſlaves. Zurita had reaſon to beſtow ſuch an encomium on the laws of his country. Torture was at that time permitted by the laws of every other nation in Europe. Even in England, from which the mild ſpirit of legiſlation has long baniſhed it, torture was not, at that time, unknown. Obſervations on the Statutes, chiefly the more ancient, &c. p. 66.

The other fact ſhows, that the ſame ſpirit which influenced the legiſlature prevailed among the people. In the year 1485, the religious zeal of Ferdinand and Iſabella prompted them to introduce the inquiſition into Aragon. Though the Aragoneſe were no leſs ſuperſtitiouſly attached than the other Spaniards to the Roman Catholic faith, and no leſs deſirous to root out the ſeeds of error and of hereſy which the Jews and Moors had ſcattered, yet they took arms againſt the inquiſitors, murdered the chief inquiſitor, and long oppoſed the eſtabliſhment of that tribunal. The reaſon which they gave for their conduct was, That the mode of trial in the inquiſition was inconſiſtent with liberty. The criminal was not confronted with the witneſſes, he was not acquainted with what they depoſed againſt him, he was ſubjected to torture, and the goods of perſons condemned were confiſcated. Zurita Anales, tom. iv. p. 341.

The form of government in the kingdom of Valencia, and principality of Catalonia, which were annexed to the crown of Aragon, was likewiſe extremely favourable to liberty. The Valencians enjoyed the privilege of *union* in the ſame manner with the Aragoneſe. But they had no magiſtrate reſembling the juſtiza. The Catalonians were no leſs jealous of their liberties than the two other nations, and no leſs bold in aſſerting them. But it is not neceſſary for illuſtrating the following hiſtory to enter into any farther detail concerning the peculiarities in the conſtitution of theſe kingdoms.

## NOTE XXXIII. Sect. III. p. 138. [KK].

I have ſearched in vain among the hiſtorians of Caſtile for ſuch information as might enable me to trace the progreſs of laws and government in Caſtile, or to explain the nature of the conſtitution with the ſame degree of accuracy wherewith I have deſcribed the political ſtate of Aragon. It is manifeſt not only from the hiſtorians of Caſtile, but from its ancient laws, particularly the Fuero Juzgo, that its monarchs were originally elective. Ley, 2, 5, 8. They were choſen by the biſhops, the nobility, and the people, ibid. It appears from the ſame venerable code of laws, that the prerogative of the Caſtilian monarchs was extremely limited. Villaldiego, in his commentary on the Feuro Juzgo, produces many facts and authorities in confirmation of both theſe particulars. Dr. Geddes, who was well acquainted with Spaniſh literature, complains that he could find no author who gave a diſtinct account of the Cortes or ſupreme aſſembly of the nation, or who deſcribed the manner in which it was held, or mentioned the preciſe number of members who had a right to ſit in it. He produces, however, from Gil Gonzales d'Avila, who publiſhed a hiſtory of Henry II. the writ of ſummons to the town of Abula, requiring it to chuſe repreſentatives to appear in the Cortes which he called to meet, A. D. 1390. From this we learn, that prelates, dukes, marquiſſes, the maſters of the three military orders, condes and ricos-hombres were required to attend. Theſe compoſed the bodies of eccleſiaſtics and nobles, which formed two members of the legiſlature. The cities which ſent members to that meeting of the Cortes were forty-eight. The number of repreſentatives (for the cities had right to chuſe more or fewer according to their reſpective dignity) amounted to an hundred and twenty-five. Geddes' Miſcellaneous Tracts. vol. i. 331. Zurita having occaſion to mention the Cortes which Ferdinand held at Toro, A. D. 1505, in order to ſecure for himſelf the government of Caſtile after the death of Iſabella, records, with his uſual accuracy, the names of the members preſent, and of the cities which they repreſented. From that liſt it appears, that only eighteen cities had deputies in this aſſembly. Anales de Aragon, tom. vi p. 3. What was the occaſion of this great difference in the number of cities repreſented in theſe two meetings of the Cortes, I am unable to explain.

## NOTE XXXIV. Sect. III. p. 140. [LL].

A great part of the territory in Spain was engroſſed by the nobility. L. Marinæus Siculus, who compoſed his treatiſe De Rebus Hiſpaniæ during the reign of Charles V. gives a catalogue of the Spaniſh nobility, together with the yearly rent of their eſtates. According to his account, which he affirms was as accurate as the nature of the ſubject would admit, the ſum total of the anuual revenue of their lands amounted to one million four hundred and eighty-two thouſand ducats. If we make allowance for the great difference in the value of money in the fifteenth century from that which it now bears, and conſider that the catalogue of Marinæus includes only the *Titulados*, or nobility whoſe families were diſtinguiſhed by ſome honorary title, their wealth muſt appear very great. L. Marinæus ap. Schotti Scriptores Hiſpan. vol. i. p. 323. The commons of Caſtile, in their conteſts with the crown, which I ſhall hereafter relate, complain of the extenſive property of the nobility as extremely pernicious to the kingdom. In one of their manifeſtoes they aſſert, that from Valladolid to St. Jago in Gallicia, which was an hundred leagues, the crown did not poſſeſs more than three villages. All the reſt belonged to the nobility, and could be ſubjected to no public burden. Sandov. Vida del Emperor Carl. V. vol. i. p. 422. It appears from the teſtimony of authors quoted by Bovadilla, that theſe extenſive poſſeſſions were beſtowed upon the *ricos-hombres*, *hidalgos*, and *cavalleros*, by the kings of Caſtile, in reward for the aſſiſtance which they had received from them in expelling the Moors. They likewiſe obtained by the ſame means a conſiderable influence in the cities, many of which anciently depended upon the nobility. Politica para Corregidores. Amb. 1750. fol. vol. i. 440, 442.

## NOTE XXXV. Sect. III. p. 142. [MM].

I have been able to diſcover nothing certain, as I obſerved Note XVIII. with reſpect to the origin of communities or free cities in Spain. It is probable that as ſoon as the conſiderable towns were recovered from the Moors, the inhabitants who fixed their reſidence in them, being perſons of diſtinction and credit, had all the privileges of municipal government and juriſdiction conferred upon them. Many ſtriking proofs occur of the ſplendour, wealth, and power of the Spaniſh cities. Hieronymus Paulus wrote a deſcription of Barcelona in the year 1491, and compares the dimenſions of the town to that of Naples, and the elegance of it buildings, the variety of its manufactures, and the extent of its commerce, to Florence. Hieron. Paulus ap. Schottum Script. Hiſp. ii. 844. Marinæus deſcribes Toledo as a large and populous city. A great number of its inhabitants were perſons of quality and of illuſtrious rank. Its commerce was great. It carried on with great activity and ſucceſs the manufactures of ſilk and wool; and the number of inhabitants employed in theſe two branches of trade, amounted nearly to ten thouſand, Marin. ubi ſupr. p. 308. I know no city, ſays he, that I would prefer to

Valladolid for elegance and ſplendour. Ibid. p. 312. We may form ſome eſtimate of its populouſneſs from the following circumſtances. The citizens having taken arms in the year 1516, in order to oppoſe a meaſure concerted by cardinal Ximenes, they muſtered in the city, and in the territory which belonged to it, thirty thouſand fighting men. Sandov. Vida del Emper. Carl. V. tom. i. p. 81. The manufactures carried on in the towns of Spain were not intended merely for home conſumption, they were exported to foreign countries, and their commerce was a conſiderable ſource of wealth to the inhabitants. The maritime laws of Barcelona are the foundation of mercantile juriſprudence in modern times, as the Leges Rhodiæ were among the ancients. All the commercial ſtates in Italy adopted theſe laws, and regulated their trade according to them. Sandi Storia Civile Veneziani, vol. ii. 865. It appears from ſeveral ordonnances of the kings of France, that the merchants of Aragon and Caſtile were received on the ſame footing, and admitted to the ſame privileges with thoſe of Italy. Ordonnances des Roys, &c. tom. ii. p. 135. iii. 166, 504, 635. Cities in ſuch a flouriſhing ſtate became a reſpectable part of the ſociety, and were entitled to a conſiderable ſhare in the legiſlature. The magiſtrates of Barcelona aſpired to the higheſt honour a Spaniſh ſubject can enjoy, that of being covered in the preſence of their ſovereign, and of being treated as grandees of the kingdom. Origin de la dignidad de Grande de Caſtilla por Don Alonſo Carillo. Madr. 1657. p. 18.

## NOTE XXXVI. Sect. III. p. 144. [NN].

The military order of St. Jago, the moſt honourable and opulent of the three Spaniſh orders, was inſtituted about the year 1170. The bull of confirmation by Alexander III. is dated A.D. 1176. At that time a conſiderable part of Spain ſtill remained under ſubjection to the Moors, and the whole country was much expoſed to depredations not only of the enemy, but of banditti. It is no wonder then, that an inſtitution, the object of which was to oppoſe the enemies of the Chriſtian faith, and to reſtrain and puniſh thoſe who diſturbed the public peace, ſhould be extremely popular, and meet with general encouragement. The wealth and power of the order became ſo great, that according to one hiſtorian the grand maſter of St. Jago was the perſon in Spain of greateſt power and dignity next to the king. Æl. Anton. Nebriſſenſis, ap. Schott. Scrip. Hiſp. i. 812. Another hiſtorian obſerves, that the order poſſeſſed every thing in Caſtile that a king would moſt deſire to obtain. Zurita Anales, v. 22. The knights took the vows of obedience, of poverty, and of conjugal chaſtity. By the former they were bound implicitly to obey the commands of their grand maſter. The order could bring into the field a thouſand men at arms. Æl. Ant. Nebreſ. p. 813. If, as we have reaſon to believe, theſe men at arms were accompanied, as was uſual in that age, this was a formidable body of cavalry. There belonged to this order eighty-four commanderies, and two hundred priories and other benefices. Diſſertations ſur la Cheva-

lerie par Hon. de St. Marie, p. 262. It is obvious how formidable to his ſovereign the command of theſe troops, the adminiſtration of ſuch revenues, and the diſpoſal of ſo many offices, muſt have rendered a ſubject. The other two orders, though inferior to that of St. Jago in power and wealth, were nevertheleſs very conſiderable fraternities. When the conqueſt of Granada deprived the knights of St. Jago of thoſe enemies againſt whom their zeal was originally directed, ſuperſtition found out a new object, in defence of which they engaged to employ their courage. To their uſual oath, they added the following clauſe: "We do ſwear to believe, to maintain, and to contend in public and in private, that the Virgin Mary, the Mother of God, our Lady, was conceived without the ſtain of original ſin."—This addition was made about the middle of the ſeventeenth century. Honore de St. Marie Diſſertations, &c. p. 263.—Nor is ſuch a ſingular engagement peculiar to the order of St. Jago. The members of the ſecond military order in Spain, that of Calatrava, equally zealous to employ their proweſs in defence of the honours of the Bleſſed Virgin, have likewiſe profeſſed themſelves her true knights. Their vow, conceived in terms more theologically accurate than that of St. Jago, may afford ſome amuſement to an Engliſh reader. "I vow to God, to the Grand Maſter, and to you who here repreſent his perſon, that now, and for ever, I will maintain and contend, that the Virgin Mary, Mother of God, our Lady, was conceived without original ſin, and never incurred the pollution of it; but that in the moment of her happy conception, and of the union of her ſoul with her body, the Divine Grace prevented and preſerved her from original guilt, by the merits of the paſſion and death of Chriſt our Redeemer, her future ſon, foreſeen in the Divine Council, by which ſhe was truly redeemed, and by a more noble kind of redemption than any of the children of Adam. In the belief of this truth, and in maintaining the honour of the moſt Holy Virgin, through the ſtrength of Almighty God, I will live and will die." Definiciones de la Orden de Calatrava, conforme al Capitulo General en 1652, fol. Madr. 1748. p. 153. Though the church of Rome hath prudently avoided to give its ſanction to the doctrine of the immaculate conception, and the two great monaſtic orders of St. Dominick and St. Francis have eſpouſed oppoſite opinions concerning it, the Spaniards are ſuch ardent champions for the honour of the Virgin, that when the preſent king of Spain inſtituted a new military order in the year 1771, in commemoration of the birth of his grandſon, he put it under the immediate protection of the moſt Holy Mary in the myſtery of her immaculate conception. Conſtitutiones de la Real y diſtinguida Orden. Eſpanola de Carlos III. p. 7. To undertake the defence of the Virgin Mary's honour, had ſuch a reſemblance to that ſpecies of refined gallantry, which was the original object of chivalry, that the zeal with which the military orders bound themſelves, by a ſolemn vow, to defend it, was worthy of a true knight in thoſe ages, when the ſpirit of the inſtitution ſubſiſted in full vigour. But in the preſent age, it muſt

excite ſome ſurpriſe to ſee the inſtitution of an illuſtrious order connected with a doctrine ſo extravagant and deſtitute of any foundation in ſcripture.

## NOTE XXXVII. Sect. III. p. 146. [OO].

I have frequently had occaſion to take notice of the defects in police during the middle ages, occaſioned by the feebleneſs of government, and the want of proper ſubordination among the different ranks of men. I have obſerved in a former Note, that this greatly interrupted the intercourſe between nations, and even between different places in the ſame kingdom. The deſcription which the Spaniſh hiſtorians give of the frequency of rapine, murder, and every act of violence, in all the provinces of Spain, are amazing, and preſent to us the idea of a ſociety but little removed from the diſorder and turbulence of that which has been called a ſtate of nature. Zurita Anales de Arag. i. 175. Æl. Ant. Nebriſſenſis rer. a Ferdin. geſtar. Hiſt. ap. Schottum, ii. 849. Tho' the exceſs of theſe diſorders rendered the inſtitution of the *Santa Hermandad* neceſſary, great care was taken at firſt to avoid giving any offence or alarm to the nobility. The juriſdiction of the judges of the Hermandad was expreſsly confined to crimes which violated the public peace. All other offences were left to the cognizance of the ordinary judges. If a perſon was guilty of the moſt notorious perjury, in any trial before a judge of the Hermandad, he could not puniſh him, but was obliged to remit the caſe to the ordinary judge of the place. Commentaria in Regias Hiſpan. Conſtitut. per Alph. de Azevedo, pars v. p. 220, &c. fol. Duaci, 1612. Notwithſtanding theſe reſtrictions, the barons were early ſenſible how much the eſtabliſhment of the Hermandad would encroach on their juriſdiction. In Caſtile ſome oppoſition was made to the inſtitution; but Ferdinand had the addreſs to obtain the conſent of the Conſtable to the introduction of the Hermandad into that part of the kingdom where his eſtate lay; and by that means, as well as the popularity of the inſtitution, he ſurmounted every obſtacle that ſtood in its way. Æl. Ant. Nebriſſen. 851. In Aragon, the nobles combined againſt it with greater ſpirit; and Ferdinand, though he ſupported it with vigour, was obliged to make ſome conceſſions, in order to reconcile them. Zurita Anales de Arag. iv. 356. The power and revenue of the Hermandad in Caſtile ſeems to have been very great. Ferdinand, when preparing for the war againſt the Moors in Granada, required of the Hermandad to furniſh him ſixteen thouſand beaſts of burden, together with eight thouſand men to conduct them, and he obtained what he demanded. Æl. Ant. Nebriſſ. 881. The Hermandad has been found to be of ſo much uſe in preſerving peace, and reſtraining or detecting crimes, that it is ſtill continued in Spain; but as it is no longer neceſſary either for moderating the power of the nobility, or extending that of the crown, the vigour and authority of the inſtitution diminiſhes gradually.

NOTE XXXVIII. Sect. III. p. 148. [PP].

Nothing is more common among antiquaries, and there is not a more copious ſource of error, than to decide concerning the inſtitutions and manners of paſt ages, by the forms and ideas which prevail in their own times. The French lawyers in the ſeventeenth and eighteenth centuries, having found their ſovereigns in poſſeſſion of abſolute power, ſeem to think it a duty incumbent on them to maintain that ſuch unbounded authority belonged to the crown in every period of their monarchy. "The government of France," ſays M. de Real very gravely, "is purely monarchical at this day, as it was from the beginning. Our kings were abſolute originally as they are at preſent." Science du Gouvernement, tom. ii. p. 31. It is impoſſible, however, to conceive two ſtates of civil ſociety more unlike to each other, than that of the French nation under Clovis, and that under Lewis XV. It is evident from the codes of laws of the various tribes which ſettled in Gaul and the countries adjacent to it, as well as from the hiſtory of Gregory of Tours, and other early annaliſts, that among all theſe people the form of government was extremely rude and ſimple, and that they had ſcarcely begun to acquire the firſt rudiments of that order and police which are neceſſary in extenſive ſocieties. The king or leader had the command of ſoldiers or companions, who followed his ſtandard from choice, not by conſtraint. I have produced the cleareſt evidence of this, Note VI. An event related by Gregory of Tours, lib iv. c. 14. affords the moſt ſtriking proof of the dependence of the early French kings on the ſentiment and inclination of their people. Clotaire I. having marched at the head of his army, in the year 553, againſt the Saxons, that people, intimidated at his approach, ſued for peace, and offered to pay a large ſum to the offended monarch. Clotaire was willing to cloſe with what they propoſed. But his army inſiſted to be led forth to battle. The king employed all his eloquence to perſuade them to accept of what the Saxons were ready to pay. The Saxons, in order to ſoothe them, increaſed their original offer. The king renewed his ſolicitations: but the army, enraged, ruſhed upon the king, tore his tent in pieces, dragged him out of it, and would have ſlain him on the ſpot, if he had not conſented to lead them inſtantly againſt the enemy.

If the early monarchs of France poſſeſſed ſuch limited authority, even while at the head of their army, their prerogative during peace will be found to be ſtill more confined. They aſcended the throne not by any hereditary right, but in conſequence of the election of their ſubjects. In order to avoid an unneceſſary number of quotations, I refer my readers to Hottomanni Francogallia, cap. vi. p. 47. edit. 1573, where they will find the fulleſt proof of this from Gregory of Tours, Amoinus, and the moſt authentic hiſtorians of the Merovingian kings. The effect of this election was not to inveſt them with abſolute power. Whatever related to the general welfare of the nation, was ſubmitted to public deliberation, and determined by the ſuffrage of the people,

in the annual aſſemblies called Les Champs de Mars and Les Champs de Mai. Theſe aſſemblies were called *Champs*, becauſe, according to the cuſtom of all the barbarous nations, they were held in the open air, in ſome plain capable of containing the vaſt number of perſons who had a right to be preſent. Jo. Jac. Sorberus de Comitiis veterum Germanorum, vol. i. § 19, &c. They were denominated Champs de Mars and de Mai, from the months in which they were held. Every freeman ſeems to have had a right to be preſent in theſe aſſemblies. Sorberus, ibid. § 133, &c. The ancient annals of the Franks deſcribe the perſons who were preſent in the aſſembly held A. D. 788, in theſe words: In placito Ingelheimenſi conveniunt pontifices, majores, minores, ſacerdotes, reguli, duces, comites, præfecti, civis, oppidani, Apud Sorber. § 304. There every thing that concerned the happineſs of their country, ſays an ancient hiſtorian, every thing that could be of benefit to the Franks, was conſidered and enjoined. Fredegarius ap. Du Cange Gloſſar. voc. Campus Martii. Chlotharius II. deſcribes the buſineſs, and acknowledges the authority of theſe aſſemblies. They are called, ſays he, that whatever relates to the common ſafety may be conſidered and reſolved by common deliberation; and whatever they determine, to that I will conform. Amoinus de Geſt. Franc. lib. iv. c. i. ap. Bouquet Recueil, iii. 116. The ſtatutory clauſes, or words of legiſlative authority in the decrees iſſued in theſe aſſemblies, run not in the name of the king alone. "We have treated, ſays Childebert, in a decree, A. D. 532, in the aſſembly of March, together with our nobles, concerning ſome affairs, and we now publiſh the concluſion, that it may come to the knowledge of all." Childeb. Decret. ap. Bouquet Recueil des Hiſtor. tom. iv. p. 3. We have agreed together with our vaſſals, Ibid. § 2. It is agreed in the aſſembly in which we were all united. Ibid. § 4. The Salic laws, the moſt venerable monument of French juriſprudence, were enacted in the ſame manner. Dictaverunt Salicam legem proceres ipſius gentis, qui tunc temporis apud eam erant Rectores. Sunt autem electi de pluribus viri quatuor—qui per tres Mallos convenientes, omnes cauſarum origines ſolicité diſcurrendo, tractantes de ſingulis judicium decreverunt hoc modo. Præf. Leg. Salic. ap. Bouquet. Ibid. p. 112. Hoc decretum eſt apud regem & principes ejus, & apud cunctum populum Chriſtianum, qui infra regnum Merwingorum conſiſtunt. Ibid. p. 124. Nay, even in their charters, the kings of the firſt race are careful to ſpecify that they were granted with the conſent of their vaſſals. Ego Childebertus Rex una cum conſenſu & voluntate Francorum, &c. A. D. 558. Bouquet, ibid. 622. Chlotharius III. una cum patribus noſtris epiſcopis, optimatibus, cæteriſque palatii noſtri miniſtris, A. D. 664. Ibid. 648. De conſenſu fidelium noſtrorum. Mably Obſerv. tom. i. p. 239. The hiſtorians likewiſe deſcribe the functions of the king in the national aſſemblies in ſuch terms as imply that his authority there was extremely ſmall, and that every thing depended on the court itſelf. Ipſe Rex (ſays the author of the Annales Francorum, ſpeaking of the Field of March)

ſedebat in ſella regia, circumſtante exercitu, præcipiebatque is, die illo, quicquid a Francis decretum erat. Bouquet Recueil, tom. ii. p. 647.

That the general aſſemblies exerciſed ſupreme juriſdiction over all perſons, and with reſpect to all cauſes, is ſo evident as to ſtand in need of no proof. The trial of Brunehaut, A. D. 613, how unjuſt ſoever the ſentence againſt her may be, as related by Fredegarius, Chron. cap. 42. Bouquet, ib. 430, is in itſelf ſufficient proof of this. The notorious violence and iniquity of the ſentence ſerve to demonſtrate the extent of juriſdiction which this aſſembly poſſeſſed, as a prince ſo ſanguinary as Clothaire II. thought the ſanction of its authority would be ſufficient to juſtify his rigorous treatment of the mother and grandmother of ſo many kings.

With reſpect to conferring donatives on the prince, we may obſerve, that among nations whoſe manners and political inſtitutions are ſimple, the public as well as individuals, having few wants, they are little acquainted with taxes, and free unciviliſed tribes diſdain to ſubmit to any ſtated impoſition. This was remarkably the caſe of the Germans, and of all the various people that iſſued from that country. Tacitus pronounces two tribes not to be of German origin, becauſe they ſubmitted to pay taxes. De Morib. Germ. c. 43. And ſpeaking of another tribe according to the ideas prevalent in Germany, he ſays, "they were not degraded by the impoſition of taxes." Ib. c. 29. Upon the ſettlement of the Franks in Gaul, we may conclude, that while elated with the conſciouſneſs of victory, they would not renounce the high-ſpirited ideas of their anceſtors, or voluntarily ſubmit to a burden which they regarded as a badge of ſervitude. The evidence of the earlieſt records and hiſtorians juſtify this concluſion. M. de Monteſquieu, in the twelfth and ſubſequent chapters of the thirteenth book of l'Eſprit des Loix, and M. de Mably Obſervat. ſur l'Hiſt. de France, tom. i. p. 247, have inveſtigated this fact with great attention, and have proved clearly that the property of freemen among the Franks was not ſubject to any ſtated tax. That the ſtate required nothing from perſons of this rank, but military ſervice at their own expence, and that they ſhould entertain the king in their houſes when he was upon any progreſs thro' his dominions, or his officers when ſent on any public employment, furniſhing them with carriages and horſes. Monarchs ſubſiſted almoſt entirely upon the revenues of their own domains, and upon the perquiſites ariſing from the adminiſtration of juſtice, together with a few ſmall fines and forfeitures exacted from ſuch as had been guilty of certain treſpaſſes. It is foreign from my ſubject to enumerate theſe. The reader may find them in Obſervat. de M. de Mably, vol. i. p. 267.

When any extraordinary aid was granted by freemen to their ſovereign, it was purely voluntary. In the annual aſſembly of March or May, it was the cuſtom to make the king a preſent of money, of horſes or arms, or of ſome other thing of value. This was an ancient cuſtom, and derived from their anceſtors the Germans. Mos eſt civitatibus, ultro ac viritim conferri principibus

vel armentorum vel frugum, quod pro honore acceptum, etiam neceſſitatibus ſubvenit. Tacit. de Mor. Germ. c. 15. Theſe gifts, if we may form a judgment concerning them from the general terms in which they are mentioned by the ancient hiſtorians, were conſiderable, and made no ſmall part of the royal revenue. Many paſſages to this purpoſe are produced by M. du Cange, Diſſert. iv. ſur Joinville, 153. Sometimes a conquered people ſpecified the gift which they bound themſelves to pay annually, and it was exacted as a debt if they failed. Annales Metenſes, ap. Du Cange, ibid. p. 155. It is probable, that the firſt ſtep towards taxation was to aſcertain the value of theſe gifts which were originally gratuitous, and to compel the people to pay the ſum at which they were rated. Still, however, ſome memory of their original was preſerved, and the aids granted to monarchs in all the kingdoms of Europe were termed *benevolences* or *free gifts*.

The kings of the ſecond race in France were raiſed to the throne by the election of the people. Pepinus Rex pius, ſays an author who wrote a few years after the tranſaction which he records, per authoritatem Papæ, & unctionem ſancti chriſmatis & electionem omnium Francorum in regni ſolio ſublimatus eſt. Clauſula de Pepini conſecratione ap. Bouq. Recueil des Hiſtor. tom. v. p. 9. At the ſame time, as the chief men of the nation had transferred the crown from one family to another, an oath was exacted of them, that they ſhould maintain on the throne the family which they had now promoted; ut nunquam de alterius lumbis regem in ævo præſumant eligere. Ibid. p. 10. This oath the nation faithfully obſerved during a conſiderable ſpace of time. The poſterity of Pepin kept poſſeſſion of the throne; but with reſpect to the manner of dividing their dominions among their children, princes were obliged to conſult the general aſſembly of the nation. Thus Pepin himſelf, A. D. 768, appointed his two ſons, Charles and Charlomannus, to reign as joint ſovereigns; but he did this, una cum conſenſu Francorum et procerum ſuorum ſeu & epiſcoporum, before whom he laid the matter in their general aſſembly. Conventus apud ſanctum Dionyſium, Capitular. vol. i. p. 187. This deſtination the French confirmed in a ſubſequent aſſembly, which was called upon the death of Pepin: for, as Eginhart relates, they not only appointed them kings, but by their authority they regulated the limits of their reſpective territories. Vita Car. Magni ap. Bouquet Recueil, tom. v. p. 90. In the ſame manner, it was by the authority of the ſupreme aſſemblies that any diſpute which aroſe among the deſcendents of the royal family was determined. Charlemagne recognizes this important part of their juriſdiction, and confirms it in his charter concerning the partition of his dominions; for he appoints, that, in caſe of any uncertainty with reſpect to the right of the ſeveral competitors, he whom the people ſhall chuſe, ſhall ſucceed to the crown. Capitular. vol. i. 442.

Under the ſecond race of kings the aſſembly of the nation, diſtinguiſhed by the name of Conventus, Malli, Placita, were regularly aſſembled once a year at leaſt, and frequently twice in the

year. One of the moſt valuable monuments of the hiſtory of France is the treatiſe of Hincmarus, archbiſhop of Rheims, de ordine Palatii. He died, A. D. 882, only ſixty-eight years after Charlemagne, and he relates in that ſhort diſcourſe the facts which were communicated to him by Adalhardus, a miniſter and confident of Charlemagne. From him we learn, that this great monarch never failed to hold the general aſſembly of his ſubjects every year. In quo placito generalitas univerſorum majorum tam clericorum quam laicorum conveniebat. Hincm. oper. edit. Sirmondi, vol. ii. c. 29. 211. In theſe aſſemblies, matters which related to the general ſafety and ſtate of the kingdom were always diſcuſſed, before they entered upon any private or leſs important buſineſs. Ibid. c. 33. p. 213. His immediate ſucceſſors imitated his example, and tranſacted no affair of importance without the advice of their great council.

Under the ſecond race of kings, the genius of the French government continued to be in a good meaſure democratical. The nobles, the dignified eccleſiaſtics, and the great officers of the crown, were not the only members of the national council; the people, or the whole body of free men, either in perſon or by their repreſentatives, had a right to be preſent in it. Hincmarus, in deſcribing the manner of holding the general aſſemblies, ſays, that if the weather was favourable, they met in the open air; but if otherwiſe, they had different apartments allotted to them: ſo that the dignified clergy were ſeparated from the laity, and the comites vel hujuſmodi principes ſibimet honorificabiliter a cætera multitudine ſegregarentur. Ibid. c. 35. p. 114. Agobardus, archbiſhop of Lyons, thus deſcribes a national council in the year 833, wherein he was preſent. Qui ubique conventus extitit exreverendiſſimis epiſcopis, et magnificentiſſimis viris illuſtribus, collegio quoque abbatum et comitum, promiſcuæque ætatis et dignitatis populo. The *cætera multitudo* of Hincmarus is the ſame with the *populus* of Agobardus, and both deſcribe the inferior order of freemen, the ſame who were afterwards known in France by the name of the third eſtate, and in England, by the name of commons. The people, as well as the members of higher dignity, were admitted to a ſhare of the legiſlative power. Thus, by a law, A. D. 803, it is ordained, "that the queſtion ſhall be put to the people with reſpect to every new law, and if they ſhall agree to it, they ſhall confirm it by their ſignature." Capit. vol. i. 394. There are two capitularia which convey to us a full idea of the part which the people took in the adminiſtration of government. When they felt the weight of any grievance, they had a right to petition the ſovereign for redreſs. One of theſe petitions, in which they deſire that eccleſiaſtics might be exempted from bearing arms, and from ſerving in perſon againſt the enemy, is ſtill extant. It is addreſſed to Charlemagne, A. D. 830, and expreſſed in ſuch terms as could have been uſed only by men conſcious of liberty, and of the extenſive privileges which they poſſeſſed. They conclude with requiring him to grant their demand, if he wiſhed that they ſhould any longer continue faithful ſubjects to him. That great monarch, inſtead of being of-

fended or ſurpriſed at the boldneſs of their petition, received it in a moſt gracious manner, and ſignified his willingneſs to comply with it. But ſenſible that he himſelf did not poſſeſs legiſlative authority, he promiſes to lay the matter before the next general aſſembly, that ſuch things as were of common concern to all might be there conſidered and eſtabliſhed by common conſent. Capitul. tom. i. p. 405—409. As the people by their petitions brought matters to be propoſed in the general aſſembly, we learn from another capitulare the form in which they were approved there, and enacted as laws. The propoſitions were read aloud, and then the people were required to declare whether they aſſented to them or not. They ſignified their aſſent by crying three times, "We are ſatisfied," and then the capitulare was confirmed by the ſubſcription of the monarch, the clergy, and the chief men of the laity. Capitul. tom. i. p. 627. A. D. 822. It ſeems propable from a capitulare of Carolus Calvus, A. D. 851, that the ſovereign could not refuſe his aſſent to what was propoſed and eſtabliſhed by his ſubjects in the general aſſembly. Tit. ix. § 6. Capitul. vol. ii. p. 47. It is unneceſſary to multiply quotations concerning the legiſlative power of the national aſſembly of France under the ſecond race, or concerning its right to determine with regard to peace and war. The uniform ſtyle of the Capitularia is an abundant confirmation of the former. The reader who deſires any farther information with reſpect to the latter, may conſult Les Origines ou l'Ancien Gouvernement de la France, &c. tom. iii. p. 87. &c. What has been ſaid with reſpect to the admiſſion of the people or their repreſentatives into the ſupreme aſſembly merits attention, not only in tracing the progreſs of the French government but on account of the light which it throws upon a ſimilar queſtion agitated in England, concerning the time when the commons became part of the legiſlative body in that kingdom.

## NOTE XXXIX. Sect. III. p. 149. [QQ.]

That important change which the conſtitution of France underwent, when the legiſlative power was transferred from the great council of the nation to the king, has been explained by the French antiquaries with leſs care than they beſtow in illuſtrating other events in their hiſtory. For that reaſon I have endeavoured with greater attention to trace the ſteps which led to this memorable revolution. I ſhall here add ſome particulars which tend to throw additional light upon it. The Leges Salicæ, the Leges Burgundionum, and other codes publiſhed by the ſeveral tribes which ſettled in Gaul, were general laws extending to every perſon, to every province and diſtrict where the authority of thoſe tribes was acknowledged. But they ſeem to have become obſolete; and the reaſon of their falling into diſuſe is very obvious. Almoſt the whole property of the nation was allodial when theſe laws were framed. But when the feudal inſtitutions became general, and gave riſe to an infinite variety of queſtions peculiar to that ſpecies of tenure, the ancient codes were of no uſe in deciding

with regard to theſe, becauſe they could not contain regulations applicable to caſes which did not exiſt at the time when they were compiled. This conſiderable change in the nature of property made it neceſſary to publiſh the new regulations contained in the *Capitularia*. Many of theſe, as is evident from the peruſal of them were public laws extending to the whole French nation, in the general aſſembly of which they were enacted. The weakneſs of the greater part of the monarchs of the ſecond race, and the diſorder into which the nation was thrown by the depredations of the Normans, encouraged the barons to uſurp an independent power formerly unknown in France. The nature and extent of that juriſdiction which they aſſumed I have formerly conſidered. The political union of the kingdom was at an end, its ancient conſtitution was diſſolved, and only a feudal relation ſubſiſted between the king and his vaſſals. The regal juriſdiction extended no further than the domains of the crown. Under the laſt kings of the ſecond race, theſe were reduced almoſt to nothing. Under the firſt kings of the third race, they comprehended little more than the patrimonial eſtate of Hugh Capet, which he annexed to the crown. Even with this acceſſion, they continued to be of ſmall extent. Valley, Hiſt. de France, tom. iii. p. 32. Many of the moſt conſiderable provinces in France did not at firſt acknowledge Hugh Capet as a lawful monarch. There are ſtill extant ſeveral charters, granted during the firſt years of his reign, with this remarkable clauſe in the form of dating the charter; "Deo regnante, rege expectante," regnante domino noſtro Jeſu Chriſto, Francis autem contra jus regnum uſurpante Ugone rege. Bouquet Recueil, tom. x. p. 544. A monarch whoſe title was thus openly diſputed, was not in a condition to aſſert the royal juriſdiction, or to limit that of the barons.

All theſe circumſtances rendered it eaſy for the barons to uſurp the rights of royalty within their own territories. The Capitularia became no leſs obſolete than the ancient laws; and cuſtoms were every where introduced, and became the ſole rule by which all civil tranſactions were conducted, and all cauſes were tried. The wonderful ignorance, which became general in France during the ninth and tenth centuries contributed to the introduction of cuſtomary law. Few perſons, except eccleſiaſtics, could read; and as it was not in the power of ſuch illiterate perſons to have recourſe to written laws, either as their guide in buſineſs, or their rule in adminiſtering juſtice, the cuſtomary law, the knowledge of which was preſerved by tradition, univerſally prevailed.

During this period, the general aſſembly of the nation ſeems not to have been called, nor to have once exerted its legiſlative authority. Local cuſtoms regulated and decided every thing. A ſtriking proof of this occurs in tracing the progreſs of the French juriſprudence. The laſt of the Capitularia collected by M. Baluze, was iſſued in the year 921, by Charles the Simple. An hundred and thirty years elapſed from that period to the publication of the firſt ordonnance of the kings of the third race,

contained in the great collection of M. Lauriere, and the firſt ordonnance which appears to be an act of legiſlation extending to the whole kingdom, is that of Philip Auguſtus, A. D. 1190. Ordon. tom. i. p. 1. 18. During that long period of two hundred and ſixty-nine years, all tranſactions were directed by local cuſtoms, and no addition was made to the ſtatutory law of France. The ordonnances, previous to the reign of Philip Auguſtus contain regulations, the authority of which did not extend beyond the king's domains.

Various inſtances occur of the caution with which the kings of France ventured at firſt to exerciſe legiſlative authority. M. l'Ab. de Mably produces an ordonnance of Philip Auguſtus, A. D. 1206, concerning the Jews, who, in that age, were in ſome meaſure the property of the lord in whoſe territories they reſided. But it is rather a treaty of the king with the counteſs of Champagne, and the compte de Dampierre, than an act of royal power; and the regulations in it ſeem to be eſtabliſhed not ſo much by his authority, as by their conſent. Obſervat. ſur l'Hiſt de France, ii. p. 355. In the ſame manner an ordonnance of Louis VIII. concerning the Jews, A. D. 1223, is a contract between the king and his nobles, with reſpect to their manner of treating that unhappy race of men. Ordon. tom. i. p. 47. The Eſtabliſſemens of St. Louis, though well adapted to ſerve as general laws to the whole kingdom, were not publiſhed as ſuch, but only as a complete code of cuſtomary law, to be of authority within the king's domains. The wiſdom, the equity, and the order conſpicuous in that code of St. Louis, procured it a favourable reception throughout the kingdom. The veneration due to the virtues and good intentions of its author, contributed not a little to reconcile the nation to that legiſlative authority which the king began to aſſume. Soon after the reign of St. Louis, the idea of the king's poſſeſſing ſupreme legiſlative power became common. If, ſays Beaumanoir, the king makes any eſtabliſhment eſpecially for his own domain, the barons may nevertheleſs adhere to their ancient cuſtoms; but if the eſtabliſhment be general, it ſhall be current throughout the whole kingdom, and we ought to believe that ſuch eſtabliſhments are made with mature deliberation, and for the general good. Count de Beauvoiſis, c. 48. p. 265. Though the kings of the third race did not call the general aſſembly of the nation, during the long period from Hugh Capet to Philip the Fair, yet they ſeem to have conſulted the biſhops and barons who happened to be preſent in their court, with reſpect to any new law which they publiſhed. Examples of this occur, Ordon. tom. i. p. 3 & 5. This practice ſeems to have continued as late as the reign of St. Louis, when the legiſlative authority of the crown was well eſtabliſhed. Ordon. tom. i. p. 58. A. D. 1246. This attention paid to the barons faciliated the kings acquiring ſuch full poſſeſſion of the legiſlative power, as enabled them afterwards to exerciſe it without obſerving that formality.

The aſſemblies diſtinguiſhed by the name of the States General

were firſt called, A. D. 1302, and were held occaſionally from that period to the year 1614, ſince which time they have not been ſummoned. Theſe were very different from the ancient aſſemblies of the French nation under the kings of the firſt and ſecond race. There is no point with reſpect to which the French antiquaries are more generally agreed, than in maintaining that the States General had no ſuffrage in the paſſing of laws, and poſſeſſed no proper legiſlative juriſdiction. The whole tenor of the French hiſtory confirms this opinion. The form of proceeding in the States General was this:—The king addreſſed himſelf, at opening the meeting, to the whole body aſſembled in one place, and laid before them the affairs on account of which he had ſummoned them. Then the deputies of each of the three orders, of nobles, of clergy, and of the third eſtate, met apart, and prepared their *cahier* or memorial, containing their anſwer to the propoſitions which had been made to them, together with the repreſentations which they thought proper to lay before the king. Theſe anſwers and repreſentations were conſidered by the king in his council, and generally gave riſe to an ordonnance. Theſe ordonnances were not addreſſed to the three eſtates in common. Sometimes the king addreſſed an ordonnance to each of the eſtates in particular. Sometimes he mentioned the aſſembly of the three eſtates. Sometimes he mentioned the aſſembly of that eſtate to which the ordonnance is addreſſed. Sometimes no mention at all is made of the aſſembly of eſtates, which ſuggeſted the propriety of enacting the law. Preface au tom. iii. des Ordon. p. xx. Thus the States General had only the privilege of adviſing and remonſtrating; the legiſlative authority reſided in the king alone.

## NOTE XL. Sect. III. p. 153. [RR].

If the parliament of Paris be conſidered only as the ſupreme court of juſtice, every thing relative to its origin and juriſdiction is clear and obvious. It is the ancient court of the king's palace, new-modelled, rendered ſtationary, and inveſted with an extenſive and aſcertained juriſdiction. The power of this court, while employed in this part of its functions, is not the object of preſent conſideration. The pretenſions of the parliament to control the exerciſe of the legiſlative authority, and its claim of a right to interpoſe with reſpect to public affairs and the political adminiſtration of the kingdom, lead to inquiries attended with great difficulty. As the officers and members of the parliament of Paris were anciently nominated by the king, were paid by him, and on ſeveral occaſions were removed by him at pleaſure (Chronic. Scandaleuſe de Louis XI. chez les Mem. de Comines, tom. ii. p. 51. Edit. de M. Lenglet de Freſnoy), they cannot be conſidered as repreſentatives of the people, nor could they claim any ſhare in the legiſlative power as acting in their name. We muſt therefore ſearch for ſome other ſource of this high privilege. The parliament was originally compoſed of the moſt eminent perſons in the kingdom. The peers of France, eccleſiaſtics of the higheſt order, and noblemen of illuſtrious birth, were members of

it, to whom were added ſome clerks and counſellors learned in the laws. Paſquier Recherches, p. 44, &c. Encyclopedie, tom. xii. Art. *Parlement*, p. 3, 5. A court thus conſtituted was properly a committee of the States General of the kingdom, and was compoſed of thoſe barons and *fideles*, whom the kings of France were accuſtomed to conſult with regard to every act of juriſdiction or legiſlative authority. It was natural, therefore, during the intervals between the meetings of the States General, or during thoſe periods when that aſſembly was not called, to conſult the parliament, to lay matters of public concern before it, and to obtain its approbation and concurrence, before any ordonnance was publiſhed, to which the people were required to conform. 2. Under the ſecond race of kings, every new law was reduced into proper form by the chancellor of the kingdom, was propoſed by him to the people, and when enacted, was committed to him to be kept among the public records, that he might give authentic copies of it to all who ſhould demand them. Hincm. de Ord. Palat. c. 16. Capitul. Car. Caly. tit. xiv. § 11. tit. xxxiii. The chancellor preſided in the parliament of Paris at its firſt inſtitution. Encyclopedie, tom. iii. art. *Chancelier*, p. 88. It was therefore natural for the king to continue to employ him in his ancient functions of framing, taking into his cuſtody, and publiſhing the ordonnances which were iſſued. To an ancient copy of the Capitularia of Charlemagne, the following words are ſubjoined: Anno tertio clementiſſimi domini noſtri Caroli Auguſti, ſub ipſo anno, hæc facta Capitula ſunt, & conſignata Stephano comiti, ut hæc manifeſta faceret Pariſiis mallo publico, & illa legere faceret coram Scabineis, quod ita & fecit, & omnes in uno conſenſerunt, quod ipſi voluiſſent obſervare uſque in poſterum, etiam omnes Scabinei, Epiſcopi, Abbates, Comites, manu propria ſubter ſignaverunt. Bouquet Recueil, tom. v. p. 663. *Mallus* ſignifies not only the public aſſembly of the nation, but the court of juſtice held by the Comes, or miſſus dominicus. *Scabini* were the judges, or the aſſeſſors of the judges in that court. Here then ſeems to be a very early inſtance, not only of laws being publiſhed in a court of juſtice, but of their being verified or confirmed by the ſubſcription of the judges. If this was the common practice, it naturally introduced the verifying of edicts in the parliament of Paris. But this conjecture I propoſe with that diffidence, which I have felt in all my reaſonings concerning the laws and inſtitutions of foreign nations. 3. This ſupreme court of juſtice in France was dignified with the appellation of parliament, the name by which the general aſſembly of the nation was diſtinguiſhed towards the cloſe of the ſecond race of kings; and men, both in reaſoning and in conduct, are wonderfully influenced by the ſimilarity of names. The preſerving the ancient names of the magiſtrates eſtabliſhed while the republican government ſubſiſted in Rome, enabled Auguſtus and his ſucceſſors to aſſume new powers with leſs obſervation and greater eaſe. The beſtowing the ſame name in France upon two courts, which were extremely different, contributed not a little to confound their juriſdiction and functions.

All theſe circumſtances concurred in leading the kings of France to avail themſelves of the parliament of Paris, as the inſtrument of reconciling the people to the exerciſe of legiſlative authority by the crown. The French, accuſtomed to ſee all new laws examined and authoriſed before they were publiſhed, did not ſufficiently diſtinguiſh between the effect of performing this in the national aſſembly, or in a court appointed by the king. But as that court was compoſed of reſpectable members, and who were well ſkilled in the laws of their country, when any new edict received its ſanction, that was ſufficient to diſpoſe the people to ſubmit to it.

When the practice of *verifying* and *regiſtering* the royal edicts in the parliament of Paris became common, the parliament contended that this was neceſſary in order to give them legal authority. It was eſtabliſhed as a fundamental maxim in French juriſprudence, that no law could be publiſhed in any other manner; that without this formality no edict or ordonnance could have any effect; that the people were not bound to obey it, and ought not to conſider it as an edict or ordonnance until it was verified in the ſupreme court, after free deliberation. Roche-flavin des Parlemens de France, 4to. Gen. 1621. p. 921. The parliament, at different times, hath, with great fortitude and integrity, oppoſed the will of their ſovereigns; and, notwithſtanding repeated and peremptory requiſitions and commands of the crown, hath refuſed to verify and publiſh ſuch edicts as it conceived to be oppreſſive to the people, or ſubverſive of the conſtitution of the kingdom. Roche-flavin reckons, that between the year 1562 and the year 1589, the parliament refuſed to verify more than a hundred edicts of the kings. Ibid. 925. Many inſtances of the ſpirit and conſtancy with which the parliaments of France oppoſed pernicious laws, and aſſerted their own privileges, are enumerated by Limnæus in his Notitiæ Regni Franciæ, lib. i. c. 9. p. 224.

But the power of the parliament to maintain and defend this privilege, bore no proportion to its importance, or to the courage with which the members aſſerted it. When any monarch was determined that an edict ſhould be carried into execution, and found the parliament inflexibly reſolved not to verify or publiſh it, he could eaſily ſupply this defect by the plenitude of his regal power. He repaired to the parliament in perſon, he took poſſeſſion of his ſeat of juſtice, and commanded the edict to be read, verified, regiſtered, and publiſhed in his preſence. Then, according to another maxim of French law, the king himſelf being preſent, neither the parliament, nor any magiſtrate whatever, can exerciſe any authority, or perform any function. Adveniente Principe, ceſſat magiſtratus. Roche-flavin, ibid. p. 928, 929. Encyclopedie, tom. ix. Art. *Lit. de Juſtice*, p. 581. Roche-flavin mentions ſeveral inſtances of kings who actually exerted this prerogative, ſo fatal to the reſidue of the rights and liberties tranſmitted to the French by their anceſtors. Paſquier produces ſome inſtances of the ſame kind. Rech. p. 61. Limnæus enumerates many other inſtances, but the length to which this note has ſwelled prevents me from inſerting them at length, though they tend greatly to il-

luſtrate this important article in the French hiſtory, p. 245. Thus by an exertion of prerogative, which, though violent, ſeems to be conſtitutional, and is juſtified by innumerable precedents, all the efforts of the parliament to limit and control the king's legiſlative authority are rendered ineffectual.

I have not attempted to explain the conſtitution or juriſdiction of any parliament in France but that of Paris. All of them are formed upon the model of that moſt ancient and reſpectable tribunal, and all my obſervations concerning it will apply with full force to them.

## NOTE XLI. Sect. III. p. 157. [SS].

The humiliating poſture in which a great emperor implored abſolution is an event ſo ſingular, that the words in which Gregory himſelf deſcribes it merit a place here, and convey a ſtriking picture of the arrogance of that pontiff. Per triduum, ante portam caſtri, depoſito omni regio cultu, miſerabiliter, utpote diſcalceatus, & laneis indutus, perſiſtens, non prius cum multo fletu apoſtolicæ miſerationis auxilium, & conſolationem implorari deſtitit, quam omnes qui ibi aderant, & ad quos rumor ille pervenit, ad tantam pietatem, & compaſſionis miſerecordiam movit, ut pro eo multis precibus & lacrymis intercedentes, omnes quidem inſolitam noſtræ mentis duritiem mirarentur; nonnulli vero in nobis non apoſtolicæ ſedis gravitatem, ſed quaſi tyrannicæ feritatis crudelitatem eſſe clamârunt. Epiſt. Gregor. ap. Memorie della Conteſſa Matilda da Fran. Mar. Fiorentini. Lucca, 1756, vol. i. p. 174.

## NOTE XLII. Sect. III. p. 165. [TT].

As I have endeavoured in the hiſtory to trace the various ſteps in the progreſs of the conſtitution of the empire, and to explain the peculiarities in its policy very fully, it is not neceſſary to add much by way of illuſtration. What appears to be of any importance, I ſhall range under diſtinct heads.

1. With reſpect to the power, juriſdiction, and revenue of the emperors. A very juſt idea of theſe may be formed by attending to the view which Pfeffel gives of the rights of the emperors at two different periods. The firſt at the cloſe of the Saxon race, A. D. 1024. Theſe, according to his enumeration, were the right of conferring all the eccleſiaſtical benefices in Germany; of receiving the revenues of them during a vacancy; of mortmain, or of ſucceeding to the effects of eccleſiaſtics who died inteſtate. The right of confirming or of annulling the elections of the popes. The right of aſſembling councils, and of appointing them to decide concerning the affairs of the church. The right of conferring the title of king upon their vaſſals. The right of granting vacant fiefs. The right of receiving the revenues of the empire, whether ariſing from the Imperial domains, from impoſts and tolls, from gold or ſilver mines, from the taxes paid by the Jews, or from forfeitures. The right of governing Italy as its proper ſovereigns. The right of erecting free cities and of eſtabliſhing fairs in them. The right of aſſembling the diets of the empire, and of fixing the time of

their duration. The right of coining money, and of conferring that privilege on the ſtates of the empire. The right of adminiſtering both high and low juſtice within the territories of the different ſtates. Abregé, p. 160. The other period is at the extinction of the emperors of the families of Luxemburg and Bavaria, A. D. 1437. According to the ſame author, the Imperial prerogatives at that time were the right of conferring all dignities and titles, except the privilege of being a ſtate of the empire. The right of *Preces primariæ*, or of appointing once during their reign a dignitary in each chapter or religious houſe. The right of granting diſpenſations with reſpect to the age of majority. The right of erecting cities, and of conferring the privilege of coining money. The right of calling the meetings of the diet, and of preſiding in them. Abregé, &c. p. 507. It were eaſy to ſhew that Mr. Pfeffel is well founded in all theſe aſſertions, and to confirm them by the teſtimony of the moſt reſpectable authors In the one period, the emperors appear as mighty ſovereigns with extenſive prerogatives; in the other, as the heads of a confederacy with very limited powers.

The revenues of the emperors decreaſed ſtill more than their authority. The early emperors, and particularly thoſe of the Saxon line, beſides their great patrimonial or hereditary territories, poſſeſſed an extenſive domain both in Italy and Germany, which belonged to them as emperors. Italy belonged to the emperors as their proper kingdom, and the revenues which they drew from it were very conſiderable. The firſt alienations of the Imperial revenue were made in that country. The Italian cities having acquired wealth, and aſpiring at independence, purchaſed their liberty from different emperors, as I have obſerved, Note XV. The ſums which they paid, and the emperors with whom they concluded theſe bargains, are mentioned by Caſp. Klockius de Ærario Norimb. 1671, p. 85, &c. Charles IV. and his ſon Wenceſlaus, diſſipated all that remained of the Italian branch of the domain. The German domain lay chiefly upon the banks of the Rhine, and was under the government of the counts palatine. It is not eaſy to mark out the boundaries, or to eſtimate the value of this ancient domain, which has been ſo long incorporated with the territories of different princes. Some hints with reſpect to it may be found in the Gloſſary of Speidelius, which he has intitled, Speculum Juridico Philologico-politico Hiſtoricum Obſervationum, &c. Norimb. 1673, vol. i. 679, 1045, a more full account of it is given by Klockius de Ærario, p. 84. Beſides this the emperors poſſeſſed conſiderable diſtricts of land lying intermixed with the eſtates of the dukes and barons. They were accuſtomed to viſit theſe frequently, and drew from their vaſſals in each what was ſufficient to ſupport their court during the time of their reſidence among them. Annaliſtæ ap. Struv. tom i. 611. A great part of theſe detached poſſeſſions were ſeized by the nobles during the long interregnum, or during the wars occaſioned by the conteſts between the emperors and the court of Rome. At the ſame time that ſuch encroachments were made on the

fixed or territorial property of the emperors, they were robbed almoſt entirely of their caſual revenues. The princes and barons appropriating to themſelves taxes and duties of every kind, which had uſually been paid to them. Pfeffel Abregé, p. 374. The profuſe and inconſiderate ambition of Charles IV. ſquandered whatever remained of the Imperial revenues after ſo many defalcations. He, in the year 1376, in order to prevail with the electors to chuſe his ſon Wenceſlaus king of the Romans, promiſed each of them a hundred thouſand crowns. But being unable to pay ſo large a ſum, and eager to ſecure the election to his ſon, he alienated to the three eccleſiaſtical electors, and to the count palatine, ſuch countries as ſtill belonged to the Imperial domain on the banks of the Rhine, and likewiſe made over to them all the taxes and tolls then levied by the emperors in that diſtrict. Trithemius, and the author of the Chronicle of Magdeburgh, enumerate the territories and taxes which were thus alienated, and repreſent this as the laſt and fatal blow to the Imperial authority. Struv. Corp. vol. i. p. 437. From that period the ſhreds of the ancient revenues poſſeſſed by the emperors have been ſo inconſiderable, that, in the opinion of Speidelius, all that they yield would be ſo far from defraying the expence of ſupporting their houſehold, that they would not pay the charge of maintaining the poſts eſtabliſhed in the empire. Speidelii Speculum, &c. vol. i. p. 680. Theſe funds, inconſiderable as they were, continued to decreaſe. Granvelle, the miniſter of Charles V. aſſerted in the year 1546, in preſence of ſeveral of the German princes, that his maſter drew no money at all from the empire. Sleid. Hiſtory of the Reformation, Lond. 1689, p. 372. The ſame is the caſe at preſent. Traité de droite publique de l'Empire, par M. le Coq. de Villeray, p. 55. From the reign of Charles IV. whom Maximilian called the peſt of the empire, the emperors have depended entirely on their hereditary dominions, as the chief, and almoſt the only ſource of their power, and even of their ſubſiſtence.

2. The ancient mode of electing the emperors, and the various changes which it underwent, require ſome illuſtration. The Imperial crown was originally attained by election, as well as thoſe of moſt monarchies in Europe. An opinion long prevailed among the antiquaries and public lawyers of Germany, that the right of chuſing the emperors was veſted in the archbiſhops of Mentz, Cologne, and Treves, the king of Bohemia, the duke of Saxony, the marquis of Brandenburgh, and the count palatine of the Rhine, by an edict of Otho III. confirmed by Gregory V. about the year 996. But the whole tenor of hiſtory contradicts this opinion. It appears, that from the earlieſt period in the hiſtory of Germany, the perſon who was to reign over all, was elected by the ſuffrage of all. Thus Conrad I. was elected by all the people of the Franks, ſay ſome annaliſts; by all the princes and chief men, ſay others; by all the nation, ſay others. See their words, Struv. Corp. 211. Conringius de German. Imper. Repub. Acroamata Sex. Ebroduni 1654, p. 103. In the year 1024, poſterior to the ſuppoſed regulations of Otho III. Conrad II. was elect-

ed by all the chief men, and his election was approved and confirmed by the people, Struv. Corp. 284. At the election of Lotharius II. A. D. 1125, ſixty thouſand perſons of all ranks were preſent. He was named by the chief men, and their nomination was approved by the people. Struv. ibid. p. 357. The firſt author who mentions the ſeven electors is Martinus Polonus, who flouriſhed in the reign of Frederick II. which ended A. D. 1250.

We find that in all the ancient elections to which I have referred, the princes of the greateſt power and authority were allowed by their countrymen to name the perſon whom they wiſhed to appoint emperor, and the people approved or diſapproved of their nomination. This privilege of voting firſt is called by the German lawyers the right of *Prætaxation*. Pfeffel Abregé, p. 316. This was the firſt origin of the excluſive right which the electors acquired. The electors poſſeſſed the moſt extenſive territories of any princes in the empire; all the great offices of the ſtate were in their hands by hereditary right; as ſoon as they obtained or engroſſed ſo much influence in the election as to be allowed the right of prætaxation, it was vain to oppoſe their will, and it even became unneceſſary for the inferior eccleſiaſtics and barons to attend, when they had no other function but that of confirming the deed of theſe more powerful princes by their aſſent. During times of turbulence, the ſubordinate members of the Germanic body could not reſort to the place of election without a retinue of armed vaſſals, the expence of which they were obliged to defray out of their own revenues; and finding their attendance to be unneceſſary, they were unwilling to waſte them to no purpoſe. The rights of the ſeven electors were ſupported by all the deſcendents and allies of their powerful families, who ſhared in the ſplendour and influence which they enjoyed by this diſtinguiſhing privilege. Pfeffel Abregé, p. 376. The ſeven electors were conſidered as the repreſentatives of all the orders which compoſed the higheſt claſs of German nobility. There were three archbiſhops, chancellors of the three great diſtricts into which the empire was anciently divided; one king, one duke, one marquis, and one count. All theſe circumſtances contributed to render the introduction of this conſiderable innovation into the conſtitution of the Germanic body extremely eaſy. Every thing of importance, relating to this branch of the political ſtate of the empire, is well illuſtrated by Onuphrius Panvinius, an Auguſtinian monk of Verona, who lived in the reign of Charles V. His treatiſe, if we make ſome allowance for that partiallity which he expreſſes in favour of the powers which the popes claimed in the empire, has the merit of being one of the firſt works in which a controverted point in hiſtory is examined with critical preciſion, and with a proper attention to that evidence which is derived from records, or the teſtimony of contemporary hiſtorians. It is inſerted by Goldaſtus in his Politica Imperialia, p. 2.

As the electors have engroſſed the ſole right of chuſing the emperors, they have aſſumed likewiſe that of depoſing them. This high power the electors have not only preſumed to claim, but

have ventured, in more than one inſtance, to exerciſe. In the year 1298, a part of the electors depoſed Adolphus of Naſſau, and ſubſtituted Albert of Auſtria in his place. The reaſons on which they found their ſentence, ſhewed that this deed flowed from factious, not from public ſpirited motives. Struv. Corp. vol. i. 540. In the firſt year of the fifteenth century, the electors depoſed Wenceſlaus, and placed the Imperial crown on the head of Rupert elector palatine. The act of depoſition is ſtill exant. Goldaſti Conſtit. vol. i. 379. It is pronounced in the name and by the authority of the electors, and confirmed by ſeveral prelates and barons of the empire, who were preſent. Theſe exertions of the electoral power demonſtrate that the Imperial authority was ſunk very low.

The other privileges of the electors, and the rights of the electoral college, are explained by the writers on the public law in Germany.

3. With reſpect to the diets or general aſſemblies of the empire, it would be neceſſary, if my object were to write a particular hiſtory of Germany, to enter into a minute detail, concerning the forms of aſſembling it, the perſons who have right to be preſent, their diviſion into ſeveral colleges or benches, the objects of their deliberation, the mode in which they carry on their debates or give their ſuffrages, and the authority of their decrees or receſſes. But as my only object is to give the outlines of the conſtitution of the German empire, it will be ſufficient to obſerve, that, originally, the diets of the empire were exactly the ſame with the aſſemblies of March and of May, held by the kings of France. They met, at leaſt, once a-year. Every freeman had a right to be preſent. They were aſſemblies, in which a monarch deliberated with his ſubjects, concerning their common intereſt. Arumæus de Comitiis Rom. German. Imperii, 4to. Jenæ, 1660, cap. 7. No. 20, &c. But when the princes, dignified eccleſiaſtics, and barons, acquired territorial and independent juriſdiction, the diet became an aſſembly of the ſeparate ſtates, which formed the confederacy of which the emperor was head. While the conſtitution of the empire remained in its primitive form, attendance on the diets was a duty, like the other ſervices due from feudal ſubjects to their ſovereign, which the members were bound to perform in perſon; and if any member who had a right to be preſent in the diet, neglected to attend in perſon, he not only loſt his vote, but was liable to an heavy penalty. Arumæus de Comit. c. 5. No. 40. Whereas, from the time that the members of the diet became independent ſtates, the right of ſuffrage was annexed to the territory or dignity, not to the perſon. The members, if they could not, or would not attend in perſon, might ſend their deputies, as princes ſend ambaſſadors, and they were entitled to exerciſe all the rights belonging to their conſtituents. Ibid. No. 42, 46, 49. By degrees, and upon the ſame principle of conſidering the diet as an aſſembly of independent ſtates, in which each confederate had the right of ſuffrage, if any member poſſeſſed more than one of thoſe ſtates or characters which entitle to a ſeat in the diet, he was al-

lowed a proportional number of ſuffrages. Pfeffel Abregé, 662. From the ſame cauſe the Imperial cities, as ſoon as they became free, and acquired ſupreme and independent juriſdiction within their own territories, were received as members of the diet. The powers of the diet extend to every thing relative to the common concern of the Germanic body, or that can intereſt or affect it as a confederacy. The diet take no cognizance of the interior adminiſtration in the different ſtates, unleſs that happens to diſturb the public peace, or to threaten the general ſafety.

4. With reſpect to the Imperial chamber, the juriſdiction of which has been the great ſource of order and tranquillity in Germany, it is neceſſary to obſerve, that this court was inſtituted in order to put an end to the calamities occaſioned by private wars in Germany. I have already traced the riſe and progreſs of this practice, and pointed out its pernicious effects as fully as their extenſive influence during the middle ages required. In Germany, private wars ſeem to have been more frequent and productive of worſe conſequences than in the other countries of Europe. There are obvious reaſons for this. The nobility of Germany were extremely numerous, and the cauſes of their diſſenſion multiplied in proportion. The territorial juriſdiction which the German nobles acquired, was more complete than that poſſeſſed by their order in other nations. They became, in reality, independent powers, and they claimed all the privileges of that character. The long interregnum from A. D. 1256. to A. D. 1273, accuſtomed them to an uncontrolled licenſe, and led them to forget that ſubordination which is neceſſary in order to maintain public tranquillity. At the time when the other monarchs of Europe began to acquire ſuch an increaſe of power and revenues as added new vigour to their government, the authority and revenues of the emperors continued gradually to decline. The diets of the empire, which alone had authority to judge between ſuch mighty barons, and power to enforce its deciſions, met very ſeldom. Conring. Acroamata, p. 234. The diets, when they did aſſemble, were often compoſed of ſeveral thouſand members, Chronic. Conſtat. ap. Struv. Corp. i. p. 546. and were tumultuary aſſemblies, ill qualified to decide concerning any queſtion of right. The ſeſſion of the diets continued only two or three days; Pfeffel Abregé, p. 244: ſo that they had no time to hear or diſcuſs any cauſe that was in the ſmalleſt degree intricate. Thus Germany was left, in ſome meaſure, without any court of judicature capable of deciding the conteſts between its more powerful members, or of repreſſing the evils occaſioned by their private wars.

All the expedients which were employed in other countries of Europe, in order to reſtrain this practice, and which I have deſcribed Note XXI. were tried in Germany with little effect. The confederacies of the nobles and of the cities, and the diviſion of Germany into various circles, which I mentioned in that Note, were found likewiſe inſufficient. As a laſt remedy, the Germans had recourſe to arbiters whom they called *Auſtregæ*. The barons and ſtates in different parts of Germany joined in conventions,

by which they bound themſelves to refer all controverſies that might ariſe between them to the determination of *Auſtregæ*, and to ſubmit to their ſentences as final. Theſe arbiters are named ſometimes in the treaty of convention, an inſtance of which occurs in Ludewig Reliquæ Manuſcr. omnis ævi, vol. ii. 212; ſometimes they were choſen by mutual conſent upon occaſion of any conteſt that aroſe; ſometimes they were appointed by neutral perſons; and ſometimes the choice was left to be decided by lot. Datt. de Pace publica Imperii, lib. i. cap. 27. No. 60, &c. Speidelius Speculum, &c. voc. *Auſtrag*. p. 95. Upon the introduction of this practice, the public tribunals of juſtice became in a great meaſure uſeleſs, and were almoſt entirely deſerted.

In order to re-eſtabliſh the authority of government, Maximilian I. inſtituted the Imperial chamber at the period which I have mentioned. This tribunal conſiſted originally of a preſident, who was always a nobleman of the firſt order, and of ſixteen judges. The preſident was appointed by the emperor, and the judges, partly by him, and partly by the ſtates, according to forms which is unneceſſary to deſcribe. A ſum was impoſed, with their own conſent, on the ſtates of the empire, for paying the ſalaries of the judges and officers in this court. The Imperial chamber was eſtabliſhed at firſt at Francfort on the Maine. During the reign of Charles V. it was removed to Spires, and continued in that city above a century and a half. It is now fixed at Wetzlar. This court takes cognizance of all queſtions concerning civil right between the ſtates of the empire, and paſſes judgment in the laſt reſort, and without appeal. To it belongs likewiſe the privilege of judging in criminal cauſes, which may be conſidered as connected with the preſervation of the public peace. Pfeffel Abregé, 560.

All cauſes relating to points of feudal right or juriſdiction, together with ſuch as reſpect the territories which hold of the empire in Italy, belong properly to the juriſdiction of the Aulic council. This tribunal was formed upon the model of the ancient court of the palace inſtituted by the emperors of Germany. It depended not upon the ſtates of the empire, but upon the emperor, he having the right of appointing at pleaſure all the judges of whom it is compoſed Maximilian, in order to procure ſome compenſation for the diminution of his authority, by the powers veſted in the Imperial chamber, prevailed on the diet, A. D. 1512, to give its conſent to the eſtabliſhment of the Aulic council. Since that time it has been a great object of policy in the court of Vienna to extend the juriſdiction, and ſupport the authority of the Aulic council, and to circumſcribe and weaken thoſe of the Imperial chamber. The tedious forms and dilatory proceedings of the Imperial chamber have furniſhed the emperors with pretexts for doing ſo. Lites Spiræ, according to the witticiſm of a German lawyer, ſpirant, ſed nunquam expirant. Such delays are unavoidable in a court compoſed of members named by many different ſtates, jealous of each other. Whereas the judges of the Aulic council, depending upon one maſter, and being reſpon-

ſible to him alone, are more vigorous and deciſive. Puffendorf, de Statu Imper. German. cap. v. § 20. Pfeffel Abregè, p. 581.

NOTE XLIII. Sect. III. p. 167. [UU].

The deſcription which I have given of the Turkiſh government is conformable to the accounts of the moſt intelligent travellers who have viſited that empire. The count de Marſigli, in his treatiſe concerning the military ſtate of the Turkiſh empire, ch. vi. and the author of Obſervations on the religion, laws, government, and manners of the Turks, publiſhed at London 1768, vol. i. p. 81. differ from other writers who have deſcribed the political conſtitution of that powerful monarchy. As they had opportunity, during their long reſidence in Turkey, to obſerve the order and juſtice conſpicuous in ſeveral departments of adminiſtration, they ſeem unwilling to admit that it ſhould be denominated a deſpotiſm. But when the form of government in any country is repreſented to be deſpotic, this does not ſuppoſe that the power of the monarch is continually exerted in acts of violence, injuſtice, and cruelty. Under political conſtitutions of every ſpecies, unleſs when ſome frantic tyrant happens to hold the ſceptre, the ordinary adminiſtration of government muſt be conformable to the principles of juſtice, and if not active in promoting the welfare of the people, cannot certainly have their deſtruction for its object. A ſtate, in which the ſovereign poſſeſſes the abſolute command of a vaſt military force, together with the diſpoſal of an extenſive revenue; in which the people have no privileges, and no part either immediate or remote in legiſlation; in which there is no body of hereditary nobility, jealous of their own rights and diſtinctions, to ſtand as an intermediate order between the prince and the people, cannot be diſtinguiſhed by any name but that of a deſpotiſm. The reſtraints, however, which I have mentioned, ariſing from the *Capiculy*, and from religion, are powerful. But they are not ſuch as change the nature or denomination of the government. When a deſpotic prince employs an armed force to ſupport his authority, he commits the ſupreme power to their hands. The Prætorian bands in Rome dethroned, murdered, and exalted their princes, in the ſame wanton manner with the ſoldiery of the Porte at Conſtantinople. But notwithſtanding this, the Roman emperors have been conſidered by all political writers as poſſeſſing deſpotic power.

The author of Obſervations on the religion, laws, government, and manners of the Turks, in a preface to the ſecond edition of his work, hath made ſome remarks on what is contained in this Note, and in that part of the text to which it refers. It is with diffidence I ſet my opinion in oppoſition to that of a perſon, who has obſerved the government of the Turks with attention, and has deſcribed it with abilities. But after a careful review of the ſubject, to me the Turkiſh government ſtill appears of ſuch a ſpecies as can be ranged in no claſs but that to which political writers have given the name of *deſpotiſm*. There is not in Turkey any conſtitutional reſtraint upon the will of the ſove-

reign, or any barrier to circumſcribe the exerciſe of his power but the two which I have mentioned; one afforded by religion, the principle upon which the authority of the ſultan is founded; the other by the army, the inſtrument which he muſt employ to maintain his power. The author repreſents the *Ulema*, or body of the law, as an intermediate order between the monarch and the people. Pref. p. 30. But whatever reſtraint the authority of the *Ulema* may impoſe upon the ſovereign, is derived from religion. The *Moulahs*, out of whom the mufti and other chief officers of the law muſt be choſen, are eccleſiaſtics. It is as interpreters of the Koran or Divine Will that they are objects of veneration. The check, then, which they give to the exerciſe of arbitrary power is not different from one of thoſe of which I took notice. Indeed, this reſtraint cannot be very conſiderable. The mufti, who is the head of the order, as well as every inferior officer of law, is named by the ſultan, and is removable at his pleaſure. The ſtrange means employed by the *Ulema* in 1746, to obtain the diſmiſſion of a miniſter whom they hated, is a manifeſt proof that they poſſeſs but little conſtitutional authority which can ſerve as a reſtraint upon the will of the ſovereign. Obſervat. p. 92 of 2d edit. If the author's idea be juſt, it is aſtoniſhing that the *body of the law* ſhould have no method of remonſtrating againſt the errors of adminiſtration, but by ſetting fire to the capital.

The author ſeems to conſider the *Capiculy* or ſoldiery of the Porte, neither as formidable inſtruments of the ſultan's power, nor as any reſtraint upon the exerciſe of it. His reaſons for this opinion are, that the number of the Capiculy is ſmall in proportion to the other troops which compoſe the Turkiſh armies, and that in time of peace they are undiſciplined. Pref. 2d edit. p. 23, &c. But the troops ſtationed in a capital, though their number be not great, are always maſters of the ſovereign's perſon and power. The Prætorian bands bore no proportion to the legionary troops in the frontier provinces. The ſoldiery of the Porte are more numerous, and muſt poſſeſs power of the ſame kind, and be equally formidable, ſometimes to the ſovereign, and oftener to the people. However much the diſcipline of the Janizaries may be neglected at preſent, it certainly was not ſo in that age to which alone my deſcription of the Turkiſh government applies. The author obſerves, Pref. p. 29, that the Janizaries never depoſed any ſultan of themſelves, but that ſome form of law true or falſe, has been obſerved, and that either the mufti, or ſome other miniſter of religion, has announced to the unhappy prince the law which renders him unworthy of the throne. Obſerv. p. 102. This will always happen. In every revolution, though brought about by military power, the deeds of the ſoldiery muſt be confirmed and carried into execution with the civil and religious formalities peculiar to the conſtitution.

This addition to the Note may ſerve as a further illuſtration of my own ſentiments, but is not made with an intention of entering into any controverſy with the author of *Obſervations*, &c.

to whom I am indebted for the obliging terms in which he has expreſſed his remarks upon what I had advanced. Happy were it for ſuch as venture to communicate their opinions to the world, if every animadverſion upon them were conveyed with the ſame candid and liberal ſpirit. In one particular, however, he ſeems to have miſapprehended what I meant. Pref. p. 17. I certainly did not mention his or count Marſigli's long reſidence in Turkey, as a circumſtance which ſhould detract from the weight of their authority. I took notice of it, in juſtice to my readers, that they might receive my opinion with diſtruſt, as it differed from that of perſons whoſe means of information were ſo far ſuperior to mine.

## NOTE XLIV. Sect. III. p 168. [XX].

The inſtitution, the diſcipline, and privileges of the Janizaries are deſcribed by all the authors who give any account of the Turkiſh government. The manner in which enthuſiaſm was employed in order to inſpire them with courage, is thus related by prince Cantemir: "When Amurath I. had formed them into a body, he ſent them to Haji Bektaſh, a Turkiſh ſaint, famous for his miracles and prophecies, deſiring him to beſtow on them a banner, to pray to God for their ſucceſs, and to give them a name. The ſaint, when they appeared in his preſence, put the ſleeve of his gown upon one of their heads, and ſaid, Let them be called *Yengicheri*. Let their countenance be ever bright, their hands victorious, their ſword keen; let their ſpear always hang over the heads of their enemies, and wherever they go, may they return with a ſhining face." Hiſtory of the Ottoman Empire, p. 38. The number of Janizaries at the firſt inſtitution of the body, was not conſiderable. Under Solyman, in the year 1521, they amounted to twelve thouſand. Since that time their number has greatly increaſed. Marſigli, Etat. &c. ch. 16. p. 68. Though Solyman poſſeſſed ſuch abilities and authority as to reſtrain this formidable body within the bounds of obedience, yet its tendency to limit the power of the ſultans was, even in that age, foreſeen by ſagacious obſervers. Nicolas Daulphinois, who accompanied M. D'Aramon, ambaſſador from Henry II. of France to Solyman, publiſhed an account of his travels, in which he deſcribes and celebrates the diſcipline of the Janizaries, but at the ſame time predicts, that they would, one day, become formidable to their maſters, and act the ſame part at Conſtantinople, as the Prætorian bands had done at Rome. Collection of Voyages from the Earl of Oxford's Library, vol. i. p. 599.

## NOTE XLV. Sect. III. p. 170. [YY].

Solyman the Magnificent, to whom the Turkiſh hiſtorians have given the ſirname of *Canuni*, or inſtituter of rules, firſt brought the finances and military eſtabliſhment of the Turkiſh empire into a regular form. He divided the military force into the *Capiculy* or ſoldiery of the Porte, which was properly the ſtanding army, and *Serrataculy* or ſoldiers appointed to guard the frontiers. The

chief ſtrength of the latter conſiſted of thoſe who held Timariots and Ziams. Theſe were portions of land granted to certain perſons for life, in much the ſame manner as the military fiefs among the nations of Europe, in return for which military ſervice was performed. Solyman, in his *Canun Namé*, or book of regulations, fixed with great accuracy the extent of theſe lands in each province of his empire, appointed the preciſe number of ſoldiers each perſon who held a Timariot or a Ziam ſhould bring into the field, and eſtabliſhed the pay which they ſhould receive while engaged in ſervice. Count Marſigli and Sir Paul Rycaut have given extracts from this book of regulations, and it appears, that the ordinary eſtabliſhment of the Turkiſh army exceeded an hundred and fifty thouſand men. When theſe were added to the ſoldiery of the Porte, they formed a military power greatly ſuperior to what any Chriſtian ſtate could command in the ſixteenth century. Marſigli, Etat Militaire, &c. p. 136. Rycaut's State of the Ottoman Empire, book iii. ch. 2. As Solyman, during his active reign, was engaged ſo conſtantly in war, that his troops were always in the field, the *Serrataculy* became almoſt equal to the Janizaries themſelves in diſcipline and valour.

It is not ſurpriſing then, that the authors of the ſixteenth century ſhould repreſent the Turks as far ſuperior to the Chriſtians both in the knowledge and in the practice of the art of war. Guicciardini informs us, that the Italians learned the art of fortifying towns from the Turks. Hiſtor. lib. 15. p. 266. Buſbequius, who was ambaſſador from the emperor Ferdinand to Solyman, and who had opportunity to obſerve the ſtate both of the Chriſtian and Turkiſh armies, publiſhed a diſcourſe concerning the beſt manner of carrying on war againſt the Turks, in which he points out at great length the immenſe advantages which the Infidels poſſeſſed with reſpect to diſcipline, and military improvements of every kind. Buſbequii opera, edit. Elzevir, p. 393, &c. The teſtimony of other authors might be added, if the matter were in any degree doubtful.

Before I conclude theſe Proofs and Illuſtrations, I ought to explain the reaſon of two omiſſions in them; one of which it is neceſſary to mention on my own account, the other to obviate an objection to this part of the work.

In all my inquiries and diſquiſitions concerning the progreſs of government, manners, literature, and commerce, during the middle ages, as well as in my delineations of the political conſtitution of the different ſtates of Europe at the opening of the ſixteenth century, I have not once mentioned M. de Voltaire, who, in his *Eſſay ſur l'hiſtoire generale*, has reviewed the ſame period, and has treated of all theſe ſubjects. This does not proceed from inattention to the works of that extraordinary man, whoſe genius, no leſs enterpriſing than univerſal, has attempted almoſt every different ſpecies of literary compoſition. In many of theſe he excels. In all, if he had left religion untouched, he is inſtructive and agreeable. But as he ſeldom imitates the example of modern hiſtorians in citing the authors from whom they derived their infor-

mation, I could not, with propriety, appeal to his authority in confirmation of any doubtful or unknown fact. I have often, however, followed him as my guide in theſe reſearches; and he has not only pointed out the facts with reſpect to which it was of importance to enquire, but the concluſions which it was proper to draw from them. If he had, at the ſame time, mentioned the books which relate theſe particulars, a great part of my labour would have been unneceſſary, and many of his readers, who now conſider him only as an entertaining and lively writer, would find that he is a learned and well-informed hiſtorian.

As to the other omiſſion, every intelligent reader muſt have obſerved, that I have not entered, either in the hiſtorical part of this volume, or in the Proofs and Illuſtrations, into the ſame detail with reſpect to the ancient laws and cuſtoms of the Britiſh kingdoms, as concerning thoſe of the other European nations. As the capital facts with regard to the progreſs of government and manners in their own country are known to moſt of my readers, ſuch a detail appeared to me to be leſs eſſential. Such facts and obſervations, however, as were neceſſary towards completing my deſign in this part of the work, I have mentioned under the different articles which are the ſubjects of my diſquiſitions. The ſtate of government, in all the nations of Europe, having been nearly the ſame during ſeveral ages, nothing can tend more to illuſtrate the progreſs of the Engliſh conſtitution, than a careful inquiry into the laws and cuſtoms of the kingdoms on the continent. This ſource of information has been too much neglected by the Engliſh antiquaries and lawyers. Filled with admiration of that happy conſtitution now eſtabliſhed in Great Britain, they have been more attentive to its forms and principles than to the condition and ideas of remote times, which in almoſt every particular differ from the preſent. While engaged in peruſing the laws, charters, and early hiſtorians of the continental kingdoms, I have often been led to think that an attempt to illuſtrate the progreſs of Engliſh juriſprudence and policy, by a compariſon with thoſe of other kingdoms in a ſimilar ſituation, would be of great utility, and might throw much light on ſome points which are now obſcure, and decide others which have been long controverted.

JUL

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